

### SETTLEMENT AGREEMENT

WHEREAS, Plaintiff Sierra Club filed a civil action entitled Sierra Club v. Johnson, in the United States District Court for the District of Columbia, Civil No. 05CV00750 (ESH), alleging that the United States Environmental Protection Agency ("EPA") has a nondiscretionary duty to grant or deny, within 60 days, the petition filed by Plaintiff under Clean Air Act section 505(b)(2), 42 U.S.C. § 7661d(b)(2), seeking EPA's objection to a Clean Air Act Title V operating permit issued by the Georgia Environmental Protection Division;

WHEREAS, Plaintiff alleges that EPA has a nondiscretionary duty to grant or deny, within 60 days after the United States Court of Appeals for the Eleventh Circuit in the case of Sierra Club v. Leavitt, 368 F.3d 1300 (11<sup>th</sup> Cir. 2004), vacated EPA's original order denying the petition filed by Plaintiff seeking EPA's objection to the CAA Title V operating permit for the Oglethorpe Power Corporation's Wansley Combined Cycle Energy Facility ("OPC Wansley") issued by the Georgia Environmental Protection Division;

WHEREAS, EPA and Sierra Club (collectively, the "Parties") wish to implement this Settlement Agreement ("Agreement") to avoid protracted and costly litigation and to preserve judicial resources;

NOW, THEREFORE, the Parties, intending to be bound by this Agreement, hereby stipulate and agree as follows:

1. Within 10 days after this Agreement is signed by the Parties, but before finalization pursuant to paragraph 7 of this Agreement, the Parties shall file a joint motion with the Court notifying it of this Agreement and requesting that this case be stayed until September 21, 2005.

2. EPA shall sign no later than September 15, 2005, an order addressing the 11<sup>th</sup> Circuit's remand in Sierra Club v. Leavitt, 368 F.3d 1300 (11<sup>th</sup> Cir. 2004), and responding to the Sierra Club's petition pursuant to Section 505(b)(2) of the Clean Air Act.

3. Within three (3) business days following signature of the order required pursuant to paragraph 2 above, EPA shall send such order to Sierra Club by facsimile or electronic mail as provided in the signature block below for Sierra Club's counsel.

4. Within 15 business days following signature of the order required pursuant to paragraph 2 above, EPA shall deliver a notice of such order to the Office of the Federal Register for prompt publication. Following such delivery to the Office of the Federal Register, EPA shall not take any step (other than as necessary to correct within 10 business days after submittal any typographical or other errors in form) to delay or otherwise interfere with publication of such notice in the Federal Register.

5. Sierra Club shall file a notice of voluntary dismissal of the complaint, with prejudice, in accordance with Rule 41(a)(1)(i) of the Federal Rules of Civil Procedure provided that EPA undertakes the action provided in Paragraphs 2 – 4, 7, and 9 by the dates set forth therein. Sierra Club shall file this notice of voluntary dismissal within 30 days of receipt of payment pursuant to paragraph 9.

6. If EPA fails to take action as set forth in Paragraph 2, 3, 4, 7 or 9, Sierra Club's sole remedy under this Agreement shall be the right to ask the Court to lift the stay of proceedings, if the stay has not already expired, and proceed with litigating this case.

7. The Parties agree and acknowledge that before this Agreement is final, EPA must provide notice in the Federal Register and an opportunity for public comment on this Agreement pursuant to Clean Air Act section 113(g), 42 U.S.C. § 7413(g). EPA shall submit notice of this Agreement to the Federal Register within ten (10) days of signing of this Agreement. Following such delivery to the Office of the Federal Register, EPA shall not take any step (other than as necessary to correct within 10 business days after submittal any typographical or other errors in form) to delay or otherwise interfere with publication of such notice in the Federal Register. After this Agreement has undergone an opportunity for notice and comment, the Administrator and/or the Attorney General, as appropriate, shall promptly consider any such written comments in determining whether to withdraw or withhold their consent to the Agreement, in accordance with section 113(g) of the Clean Air Act. Once the Administrator and/or the Attorney General elect whether or not to withdraw or withhold his/her consent to this Agreement, EPA shall provide written notice to Sierra Club within three (3) business days by facsimile or electronic mail as provided in the signature block below for Sierra Club's counsel. This Agreement shall become final on the date that EPA provides such written notice to Sierra Club.

8. Nothing in this Agreement shall be construed to limit or modify the discretion accorded EPA by the Clean Air Act or by general principles of administrative law.

9. If the Agreement becomes final under Paragraph 7 and EPA undertakes the actions set forth in Paragraphs 2 – 4 and 7 by the time provided in those paragraphs, the United States, on behalf of EPA, shall pay Sierra Club its litigation costs, including attorneys' fees, within 60 days of publication in the Federal Register of notice of EPA's order regarding the OPC Wansley


petition, by paying the sum of \$11,981.86 to Sierra Club in full and complete settlement of Sierra Club's claims for litigation costs, including attorneys' fees and costs in the case of Sierra Club v. Johnson, Civil No. 05CV00750 (ESH) (D.D.C.). Sierra Club and EPA agree that the amount provided herein constitutes a fair, reasonable and full and complete settlement of all claims for attorneys' fees and costs under any provision of law that Sierra Club asserted or could have asserted in connection with this litigation if EPA undertakes the actions set forth in Paragraphs 2 – 4 and 7 by the time provided in those paragraphs. The payment from the United States shall be made by electronic wire transfer in accordance with instructions provided by Sierra Club.

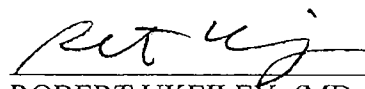
10. Except as set forth in this Agreement, the Parties retain all rights, claims, defenses, and discretion they may otherwise have.

11. The commitments of EPA in this Settlement Agreement are subject to the availability of appropriated funds. No provision of this Agreement shall be interpreted as or constitute a commitment or requirement that EPA obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341. In the event that sufficient appropriated funding is not available, Sierra Club's sole remedy is set forth Paragraph 6.

12. The undersigned representatives of each Party certify that they are fully authorized by the Party that they represent to bind that Party to the terms of this Agreement.

KELLY A. JOHNSON  
Acting Assistant Attorney General

  
MICHELE L. WALTER  
United States Department of Justice

  
ROBERT UKEILEY, (MD 14062)  
Law Office of Robert Ukeiley

Environment & Natural Resources Division  
Environmental Defense Section  
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For Defendant, Stephen L. Johnson,  
in his official capacity as Administrator,  
United States Environmental Protection  
Agency

Dated: 8/3/05

433 Chestnut Street  
Berea, KY 40403  
Tel: (859) 986-5402  
Facsimile: (859) 986-1299  
E-mail: rukeiley@igc.org  
For Plaintiff, Sierra Club

Dated: 8/2/05

CLOSED, TYPE-E

**U.S. District Court**  
**District of Columbia (Washington, DC)**  
**CIVIL DOCKET FOR CASE #: 1:05-cv-00750-ESH**

SIERRA CLUB v. JOHNSON  
Assigned to: Judge Ellen S. Huvelle  
Cause: 42:7604 Clear Air Act (Emission Standards)

Date Filed: 04/13/2005  
Date Terminated: 09/21/2005  
Jury Demand: None  
Nature of Suit: 890 Other Statutory  
Actions  
Jurisdiction: U.S. Government Defendant

Date Filed	#	Docket Text
04/13/2005	<u>1</u>	COMPLAINT against STEPHEN L. JOHNSON (Filing fee \$ 250) filed by SIERRA CLUB.(jf, ) (Entered: 04/14/2005)
04/13/2005		SUMMONS (3) Issued as to STEPHEN L. JOHNSON, U.S. Attorney and U.S. Attorney General (jf, ) (Entered: 04/14/2005)
04/13/2005	<u>2</u>	LCvR 7.1 – CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests by SIERRA CLUB (jf, ) (Entered: 04/14/2005)
04/18/2005	<u>3</u>	NOTICE OF RELATED CASE by SIERRA CLUB. Case related to Case No. 02cv00338(ESH). (Ukeiley, Robert) (Entered: 04/18/2005)
04/19/2005	<u>4</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the US Attorney. STEPHEN L. JOHNSON served on 4/14/2005, answer due 6/13/2005 (Ukeiley, Robert) (Entered: 04/19/2005)
04/19/2005		Case Reassigned to Judge Ellen S. Huvelle. Judge Reggie B. Walton no longer assigned to the case. (td, ) (Entered: 04/20/2005)
05/02/2005	<u>5</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed on Attorney General. Date of Service Upon Attorney General 4/25/05. (Ukeiley, Robert) (Entered: 05/02/2005)
05/02/2005	<u>6</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to STEPHEN L. JOHNSON served on 4/25/2005, answer due 6/24/2005. (Ukeiley, Robert) (Entered: 05/02/2005)
06/10/2005	<u>7</u>	Joint MOTION to Stay <i>Proceedings</i> by STEPHEN L. JOHNSON. (Attachments: # <u>1</u> Text of Proposed Order)(Walter, Michele) (Entered: 06/10/2005)
06/10/2005		Minute ORDER granting <u>7</u> Motion to Stay Proceedings until 7/1/05. Signed by Judge Ellen S. Huvelle on 6/10/05. (BL) (Entered: 06/10/2005)
06/30/2005	<u>8</u>	Joint MOTION to Stay <i>all proceedings</i> by SIERRA CLUB. (Attachments: # <u>1</u> Text of Proposed Order)(Ukeiley, Robert) (Entered: 06/30/2005)
07/05/2005		Minute ORDER granting <u>8</u> Motion to Stay All Proceedings. Signed by Judge Ellen S. Huvelle on 7/5/05. (BL) (Entered: 07/05/2005)
07/05/2005	<u>9</u>	NOTICE of Appearance by Michele L. Walter on behalf of STEPHEN L. JOHNSON (Walter, Michele) (Entered: 07/05/2005)
07/12/2005	<u>10</u>	Joint MOTION to Stay <i>Proceedings</i> by SIERRA CLUB. (Attachments: # <u>1</u> Text of Proposed Order)(Ukeiley, Robert) (Entered: 07/12/2005)

07/13/2005		Minute ORDER granting <u>10</u> Motion to Stay Case until 8/3/05. Signed by Judge Ellen S. Huvelle on 7/13/05. (BL) (Entered: 07/13/2005)
08/02/2005	<u>11</u>	Joint MOTION to Stay <i>all proceedings</i> by SIERRA CLUB. (Attachments: # <u>1</u> Text of Proposed Order)(Ukeiley, Robert) (Entered: 08/02/2005)
08/03/2005		Minute ORDER granting <u>11</u> Motion to Stay until 9/21/05. Signed by Judge Ellen S. Huvelle on 8/3/05. (BL) (Entered: 08/03/2005)
09/21/2005	<u>12</u>	Joint MOTION to Stay <i>Proceedings</i> by STEPHEN L. JOHNSON. (Attachments: # <u>1</u> Text of Proposed Order)(Walter, Michele) (Entered: 09/21/2005)
09/21/2005	<u>13</u>	Minute ORDER granting <u>12</u> Motion to Stay . Signed by Judge Ellen S. Huvelle on 9/21/05. (BL) (Entered: 09/21/2005)
11/01/2005	<u>14</u>	NOTICE of Voluntary Dismissal by SIERRA CLUB (Ukeiley, Robert) (Entered: 11/01/2005)

**SETTLEMENT AGREEMENT  
(COSTS OF LITIGATION)**

WHEREAS, Plaintiffs Blue Skies Alliance, Downwinders at Risk, Public Citizen, and Sierra Club filed the complaint in Civil Action No. 3:04-CIV-2169 (N.D. Tex.) on October 1, 2004, against Defendants Stephen L. Johnson, Administrator of the United States Environmental Protection Agency; Richard Greene, Administrator, Region 6; and the United States Environmental Protection Agency ("Federal Defendants") to compel the Federal Defendants to perform certain actions allegedly required by the Clean Air Act ("CAA");

WHEREAS, on August 8, 2005, the Court has entered a Consent Decree resolving Plaintiffs' claims;

WHEREAS, Paragraph 10 of the Consent Decree provides that Plaintiffs are entitled to recover costs of litigation (including attorneys' fees) pursuant to CAA section 304(d), 42 U.S.C. § 7604(d);

WHEREAS, in order to avoid unnecessary litigation, the parties wish to settle Plaintiffs' claims against the Federal Defendants for costs of litigation (including attorneys' fees);

NOW, it is therefore agreed:

1. As soon as reasonably practicable after the execution of this Agreement by the Parties, the United States shall pay \$45,000 by electronic funds transfer in accord with instructions to be provided by Plaintiffs.
2. Any obligations of the United States to obligate or expend funds under this Settlement Agreement are subject to the availability of appropriations in accordance with the Anti-Deficiency Act, 31 U.S.C. § 1341. This Settlement Agreement shall not be construed to require the United States to obligate or pay funds in contravention of said Anti-Deficiency Act,



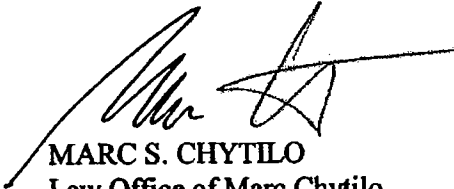
31 U.S.C. § 1341.

3. Plaintiffs agree that the payment of \$45,000 pursuant to Paragraph 1 constitutes full and final payment of fees and costs incurred by Plaintiffs as against the Federal Defendants in connection with this matter.

4. The undersigned representatives of each party certify that they are fully authorized by the party or parties they represent to enter into this Settlement Agreement.

SO AGREED:

FOR PLAINTIFFS:

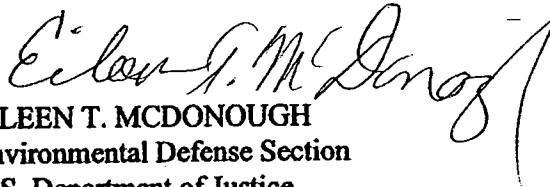


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Dated: 10/6/2005

FOR EPA:

KELLY JOHNSON  
Acting Assistant Attorney General  
Environment and Natural Resources Division



EILEEN T. MCDONOUGH  
Environmental Defense Section  
U.S. Department of Justice  
P.O. Box 23986  
Washington, D.C. 20026-3986

Dated: 10/08/2005

CLOSED, RAMIREZ, STAYED

**U.S. District Court**  
**Northern District of Texas (Dallas)**  
**CIVIL DOCKET FOR CASE #: 3:04-cv-02169-R**

Blue Skies Alliance et al v. Johnson et al  
Assigned to: Senior Judge Jerry Buchmeyer  
Case in other court: USCA, 06-10974  
Cause: 42:7604 Clear Air Act (Emission Standards)

Date Filed: 10/06/2004  
Date Terminated: 08/05/2005  
Jury Demand: None  
Nature of Suit: 893 Environmental Matters  
Jurisdiction: U.S. Government Defendant

Date Filed	#	Docket Text
10/06/2004	<u>1</u>	COMPLAINT against Richard E Greene, Michael O. Leavitt, United States Environmental Protection Agency ( Filing fee \$150; Receipt number 211853), filed by Blue Skies Alliance, Downwinders at Risk, Public Citizen, Sierra Club.(aat, ) (Entered: 10/06/2004)
10/06/2004	<u>2</u>	CERTIFICATE OF INTERESTED PERSONS/DISCLOSURE STATEMENT by Blue Skies Alliance, Downwinders at Risk, Public Citizen, Sierra Club. (aat, ) (Entered: 10/06/2004)
10/06/2004	<u>3</u>	Summons Issued as to Richard E Greene, Michael O. Leavitt, United States Environmental Protection Agency, U.S. Attorney and U.S. Attorney General (aat, ) (Entered: 10/06/2004)
10/06/2004		***Magistrate Judge Ramirez chosen by random selection to handle matters that may be referred in this case. (aat, ) (Entered: 10/06/2004)
10/12/2004	<u>4</u>	NOTICE of attorney appearance by Eileen T McDonough on behalf of Richard E Greene, Michael O. Leavitt, United States Environmental Protection Agency (aat, ) (Entered: 10/13/2004)
11/05/2004	<u>5</u>	MOTION to intervene by BCAA Appeal Group with brief. (aat, ) (Entered: 11/08/2004)
11/05/2004	<u>6</u>	APPENDIX in support re <u>5</u> motion to intervene filed by BCAA Appeal Group. (aat, ) (Entered: 11/08/2004)
11/08/2004	<u>7</u>	MOTION to intervene by The Association of Electric Companies of Texas with supporting brief. (aat, ) (Entered: 11/09/2004)
11/15/2004	<u>8</u>	SCHEDULING ORDER: Amended Pleadings due by 1/21/2005. Discovery due by 2/4/2005. Docket Call set for 4/4/2005 before Judge Jerry Buchmeyer. Pretrial Conference set for 4/1/2005 at 10:00 AM before Judge Jerry Buchmeyer. Motions due by 2/18/2005. Pretrial Materials due by 3/18/2005. Joint status report due 12/17/04. (Signed by Judge Jerry Buchmeyer on 11/15/4) (aat, ) (Entered: 11/16/2004)
11/15/2004		Set/Reset Deadlines: Joint Status Report due by 12/17/2004. (aat, ) (Entered: 11/16/2004)
11/16/2004	<u>9</u>	ORDER REGARDING JUDGE BUCHMEYER'S SCHEDULING ORDER. (Signed by Judge Irma C Ramirez on 11/16/4) (aat, ) (Entered: 11/17/2004)
11/24/2004	<u>10</u>	RESPONSE to <u>5</u> motion to intervene and <u>7</u> motion to intervene filed by United States Environmental Protection Agency. (aat, ) (Entered: 11/29/2004)
11/26/2004	<u>11</u>	RESPONSE to motion re <u>5</u> motion to intervene and <u>7</u> motion to intervene filed by Blue Skies Alliance, Public Citizen, Sierra Club. (aat, ) (Entered: 11/29/2004)
12/06/2004	<u>12</u>	ANSWER to Complaint by Richard E Greene, Michael O. Leavitt, United States Environmental Protection Agency.(aat, ) (Entered: 12/07/2004)
12/06/2004	<u>13</u>	REPLY to Response to Motion re <u>5</u> MOTION to Intervene filed by BCAA Appeal Group. (aat, ) (Entered: 12/07/2004)

12/10/2004	<u>14</u>	REPLY to Response to Motion re <u>7</u> MOTION to Intervene filed by The Association of Electric Companies of Texas. (aat, ) (Entered: 12/13/2004)
12/16/2004	<u>15</u>	UNOPPOSED MOTION to Intervene by Texas Commission on Environmental Quality (aat, ) (Entered: 12/17/2004)
12/17/2004	<u>16</u>	AGREED ORDER granting <u>15</u> Unopposed Motion to Intervene of Texas Commission on Environmental Quality. (Signed by Judge Jerry Buchmeyer on 12/17/04) (aat, ) (Entered: 12/20/2004)
12/17/2004	<u>17</u>	ANSWER to complaint by Texas Commission on Environmental Quality.(aat, ) (Entered: 12/20/2004)
12/20/2004	<u>18</u>	AFFIDAVIT of Service for summons and complaint served on Michael Leavitt via certified mail. No green card attached. (aat, ) (Entered: 12/21/2004)
12/20/2004	<u>19</u>	AFFIDAVIT of Service for summons and complaint served on US Attorney General via certified mail. No green card attached. (aat, ) (Entered: 12/21/2004)
12/20/2004	<u>20</u>	SUMMONS Returned Executed as to US Attorney (Michael O. Leavitt served on 10/6/2004, answer due 12/6/2004; Richard E Greene served on 10/6/2004, answer due 12/6/2004; United States Environmental Protection Agency served on 10/6/2004, answer due 12/6/2004). (aat, ) (Entered: 12/21/2004)
12/20/2004	<u>21</u>	AFFIDAVIT of Service for summons and complaint served on US Environmental Protection Agency via certified mail. No green card attached. (aat, ) (Entered: 12/21/2004)
12/20/2004	<u>22</u>	AFFIDAVIT of Service for summons and complaint served on Richard Greene via certified mail. No green card attached. (aat, ) (Entered: 12/21/2004)
12/27/2004	<u>23</u>	JOINT STATUS REPORT by Michael O. Leavitt, Richard E Greene, United States Environmental Protection Agency, Blue Skies Alliance, Downwinders at Risk, Texas Commission on Environmental Quality, Public Citizen, Sierra Club. (aat, ) (Entered: 12/28/2004)
01/07/2005	<u>24</u>	Designation of Experts by Blue Skies Alliance, Downwinders at Risk, Public Citizen, Sierra Club. (klm, ) (Entered: 01/07/2005)
01/12/2005	<u>25</u>	ORDER granting <u>5</u> BCCA Appeal Group Motion to Intervene. BCCA shall file an appropriate pleading intervening in this action within 20 days of this Order and shall be afforded all of the rights of a party in these proceedings, including but not limited to, receiving timely and fair notice of and a full opportunity to participate in mediation and settlement discussions among the parties. (Signed by Judge Jerry Buchmeyer on 1/12/05) (klm, ) (Entered: 01/13/2005)
01/12/2005	<u>26</u>	***VACATED PER ORDER OF 1/21/05***ORDER granting <u>7</u> Motion to Intervene of The Association of Electric Companies of Texas. The Answer attached as Exhibit "A" to the Motion to Intervene of The Association of Electric Companies of Texas is deemed filed of record in connection with this matter. (Signed by Judge Jerry Buchmeyer on 1/12/05) (klm, ) Modified on 1/24/2005 (klm, ). (Entered: 01/13/2005)
01/12/2005	<u>27</u>	Unopposed MOTION to Intervene by Collin County, Tarrant County (klm, ) (Entered: 01/13/2005)
01/13/2005	<u>28</u>	ANSWER of Intervenor to Complaint by The Association of Electric Companies of Texas.(klm, ) (Entered: 01/14/2005)
01/13/2005	<u>29</u>	MOTION to Intervene as Defendant and Brief in Support Thereof by City of Garland, Texas(klm, ) (Entered: 01/14/2005)
01/14/2005	<u>30</u>	ORDER granting <u>27</u> Motion to Intervene of Intervenor Tarrant County and Collin County. (Signed by Judge Irma C Ramirez on 1/13/05) (klm, ) (Entered: 01/14/2005)
01/14/2005	<u>31</u>	ANSWER in Intervention to Complaint by Collin County, Tarrant County.(klm, ) (Entered: 01/14/2005)
01/19/2005	<u>32</u>	MOTION to Intervene and supporting brief by Portland Cement Association. (lmr, ) (Entered: 01/24/2005)

Desert Rock Energy Co., LLC v. EPA

No. 4:08-cv-872 (S.D. Tex.)

Gunter Declaration

Exhibit B2, page 4

01/19/2005	<u>33</u>	MOTION to Intervene and supporting brief by Ellis County. (lmr, ) (Entered: 01/24/2005)
01/21/2005	<u>34</u>	ORDER: The Court's Order Granting Motion to Intervene of the Association of Electric Companies of Texas (entered 1/12/05 is VACATED. (Signed by Judge Jerry Buchmeyer on 1/21/05) (klm, ) (Entered: 01/24/2005)
01/27/2005	<u>37</u>	ORDER GRANTING MOTION TO INTERVENE OF THE ASSOCIATION OF ELECTRIC COMPANIES OF TEXAS: The Answer attached as Exhibit "A" to AECT's Motion to Intervene is deemed filed of record. (Signed by Judge Jerry Buchmeyer on 1/27/05) (klm, ) (Entered: 02/02/2005)
01/27/2005	<u>38</u>	ANSWER to Complaint by The Association of Electric Companies of Texas.(klm, ) (Entered: 02/02/2005)
01/28/2005	<u>35</u>	ANSWER to Complaint by BCAA Appeal Group.(klm, ) (Entered: 02/01/2005)
01/28/2005	<u>36</u>	CERTIFICATE of Conference re <u>29</u> MOTION to Intervene by R Lambeth Townsend on behalf of City of Garland, Texas (klm, ) (Entered: 02/01/2005)
02/09/2005	<u>39</u>	ORDER: Discovery responses due by 2/25/2005. Pretrial Conference set for 5/20/2005 before Judge Jerry Buchmeyer. Dispositive Motions due by 3/4/2005. Proposed Pretrial Order due by 5/2/2005. Pretrial Materials due by 5/2/2005. (Signed by Judge Jerry Buchmeyer on 2/9/05) (klm, ) (Entered: 02/10/2005)
02/09/2005		Set/Reset Deadlines as to Responses served by 3/24/2005 Replies served by 4/8/2005. (see image 39) (klm, ) (Entered: 02/10/2005)
02/09/2005	<u>40</u>	ORDER granting <u>29</u> Motion to Intervene of the City of Garland, Texas. (Signed by Judge Jerry Buchmeyer on 2/9/05) (klm, ) (Entered: 02/10/2005)
02/09/2005	<u>41</u>	ORDER granting <u>32</u> Motion to Intervene of The Portland Cement Association (Signed by Judge Jerry Buchmeyer on 2/9/05) (klm, ) (Entered: 02/10/2005)
02/09/2005	<u>42</u>	ORDER granting <u>33</u> Motion to Intervene of Ellis County (Signed by Judge Jerry Buchmeyer on 2/9/05) (klm, ) (Entered: 02/10/2005)
02/09/2005	<u>43</u>	ANSWER to Complaint by City of Garland, Texas.(klm, ) (Entered: 02/10/2005)
02/09/2005	<u>44</u>	ANSWER to Complaint by Portland Cement Association.(klm, ) (Entered: 02/10/2005)
02/09/2005	<u>45</u>	ANSWER to Complaint by Ellis County.(klm, ) (Entered: 02/10/2005)
03/08/2005	<u>46</u>	Unopposed MOTION for Leave to File Out of Time by Stephen L Johnson, Richard E Greene, United States Environmental Protection Agency, Texas Commission on Environmental Quality (klm, ) (Entered: 03/08/2005)
03/17/2005	<u>47</u>	AMENDED SCHEDULING ORDER: Docket Call set for four-week docket beginning 6/6/2005 before Judge Jerry Buchmeyer. Pretrial Conference set for 6/3/2005 10:00 AM before Judge Jerry Buchmeyer. Motions due by 4/26/2005. Pretrial Materials due by 5/16/2005. (Signed by Judge Jerry Buchmeyer on 3/17/05) (klm, ) (Entered: 03/18/2005)
03/18/2005	<u>48</u>	Stipulation and MOTION for Modification re <u>47</u> Scheduling Order, by Stephen L Johnson, Ellis County, Richard E Greene, United States Environmental Protection Agency, Blue Skies Alliance, Downwinders at Risk, Texas Commission on Environmental Quality, Public Citizen, Sierra Club, Collin County (klm, ) (Entered: 03/21/2005)
03/23/2005	<u>49</u>	ORDER granting <u>48</u> Motion to Modify. (see order for specifics) (Signed by Judge Jerry Buchmeyer on 3/23/05) (klm, ) (Entered: 03/24/2005)
03/23/2005		Set/Reset Scheduling Order Deadlines: Discovery due by 3/25/2005. Docket Call set for 7/11/2005 09:00 AM before Judge Jerry Buchmeyer. Pretrial Conference set for 7/8/2005 10:00 AM before Judge Jerry Buchmeyer. Motions due by 4/1/2005. Proposed Pretrial Order due by 5/31/2005. Pretrial Materials due by 5/31/2005. (see image 49) (klm, ) (Entered: 03/24/2005)
04/18/2005	<u>50</u>	Stipulation and MOTION for Stay of Schedule by Stephen L Johnson, Richard E Greene, United States Environmental Protection Agency, Blue Skies Alliance, Downwinders at Risk, Texas Commission on Environmental Quality, Public Citizen, Sierra Club, Collin County (klm, ) (Entered: 04/20/2005)

04/21/2005	<u>51</u>	NOTICE of Attorney Appearance by Gary E. Zausmer for Albert R Axe, Jr on behalf of Portland Cement Association, Ellis County, The Association of Electric Companies of Texas. (klm, ) (Entered: 04/21/2005)
04/21/2005	<u>52</u>	ORDER granting <u>50</u> Motion to Stay Litigation until 5/6/05. No later than that date EPA must lodge a consent decree with this Court or file a status report. (Signed by Judge Jerry Buchmeyer on 4/20/05) (klm, ) (Entered: 04/21/2005)
05/06/2005	<u>53</u>	NOTICE of Lodging of Proposed Consent Decree by Stephen L Johnson (klm, ) (Entered: 05/09/2005)
08/05/2005	<u>54</u>	MOTION to Enter Consent Decree Pursuant to Stipulation by Plaintiff, Defendants, and Intervenor-Defendant TCEQ by Stephen L Johnson, Richard E Greene, United States Environmental Protection Agency, Blue Skies Alliance, Downwinders at Risk, Texas Commission on Environmental Quality, Public Citizen, Sierra Club (klm, ) (Entered: 08/08/2005)
08/05/2005	<u>55</u>	ORDER granting <u>54</u> Motion to Enter Consent Decree (Signed by Judge Jerry Buchmeyer on 8/5/05) (klm, ) (Entered: 08/08/2005)
08/05/2005	<u>56</u>	CONSENT DECREE (see order for specifics) (Signed by Judge Jerry Buchmeyer on 8/5/05) (klm, ) (Entered: 08/08/2005)
08/05/2005		***Civil Case Terminated. (klm, ) (Entered: 08/08/2005)
11/23/2005	<u>57</u>	MOTION for Attorney Fees by Blue Skies Alliance, Downwinders at Risk, Public Citizen, Sierra Club with Brief in Support. (kdc, ) (Entered: 11/28/2005)
11/23/2005	<u>58</u>	Appendix in Support re <u>57</u> MOTION for Attorney Fees filed by Blue Skies Alliance, Downwinders at Risk, Public Citizen, Sierra Club. (kdc, ) (Entered: 11/28/2005)
12/13/2005	<u>59</u>	Unopposed MOTION to Extend the Deadlines for Response and Reply Briefs as to <u>57</u> Plaintiffs' MOTION for Attorney Fees from Texas Commission on Environmental Quality by Texas Commission on Environmental Quality (klm, ) (Entered: 12/13/2005)
12/14/2005	<u>60</u>	ORDER granting <u>59</u> Unopposed Motion to Extend the Deadline for Response and Reply Briefs on Plaintiffs' Motion for Attorney's Fees from Texas Commission on Environmental Quality. Replies due by 2/3/2006. Responses due by 1/6/2006 (Signed by Judge Jerry Buchmeyer on 12/14/05) (klm, ) (Entered: 12/15/2005)
01/06/2006	<u>61</u>	RESPONSE to Motion re <u>57</u> Plaintiffs' MOTION for Attorney Fees from the TCEQ and Brief in Support of Response filed by Texas Commission on Environmental Quality. (klm, ) (Entered: 01/06/2006)
01/06/2006	<u>62</u>	Appendix re <u>61</u> Response to Plaintiffs' Motion for Attorney's Fees from the TCEQ and Brief in Support of Response filed by Texas Commission on Environmental Quality. (Attachments: # <u>1</u> Appendix # <u>2</u> Appendix)(klm, ) (Entered: 01/06/2006)
02/03/2006	<u>63</u>	Reply to Intervenor's Opposition to Motion for Attorney's Fees from Texas Commission on Environmental Quality filed by Blue Skies Alliance, Downwinders at Risk, Public Citizen, Sierra Club. (klm, ) (Entered: 02/06/2006)
02/03/2006	<u>64</u>	Appendix re <u>63</u> Reply filed by Blue Skies Alliance, Downwinders at Risk, Public Citizen, Sierra Club. (klm, ) (Entered: 02/06/2006)
03/07/2006	<u>65</u>	NOTICE of Change of Address by R Lambeth Townsend, New address is: 816 Congress Avenue, Suite 1900, Austin, TX, 78701. (klm, ) (Entered: 03/07/2006)
08/10/2006	<u>66</u>	ORDER granting <u>57</u> Motion for Attorney Fees. It is hereby ordered that plas are awarded atty's fees in the amt of \$56,276.10. Plas are awarded interest in accordance with 28 USC Section 1961(a) at a rate of 5.10%, the rate in effect for the period 7-14, 2006, accruing from the date of entry of this order to the date payment is transmitted to plas. See order for details. (Signed by Judge Jerry Buchmeyer on August 10, 2006) (jyg, ) (Entered: 08/10/2006)
09/07/2006	<u>67</u>	NOTICE OF APPEAL as to <u>66</u> Order on Motion for Attorney Fees, by Texas Commission on Environmental Quality. Filing fee \$ 455, receipt number DS003874. (jmr) (Entered: 09/07/2006)

Desert Rock Energy Co., LLC v. EPA

No. 4:08-cv-872 (S.D. Tex.)

Gunter Declaration

Exhibit B2, page 6



09/07/2006	<u>68</u>	Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals re <u>67</u> Notice of Appeal. (jmr) (Entered: 09/07/2006)
09/07/2006	<u>69</u>	Transcript Order Form from attorney for Intervenor: transcript not requested re <u>67</u> Notice of Appeal. No hearings. (jmr) (Entered: 09/07/2006)
09/25/2006		USCA Case Number 06-10974 for <u>67</u> Notice of Appeal filed by Texas Commission on Environmental Quality. (jmr) (Entered: 09/25/2006)
09/25/2006		Certified Record on Appeal: 4 vol. electronic record.(jmr) (Entered: 09/25/2006)
10/10/2006	<u>70</u>	NOTICE of Transfer of the USCA5 Appeal Record to Linda Secord, attorney for Texas Commission on Environmental Quality re <u>67</u> Notice of Appeal: 4 vol. electronic record. (jmr) Additional attachment(s) added on 12/18/2006 (jmr, ). (Entered: 10/10/2006)
12/18/2006	<u>71</u>	NOTICE of Transfer of USCA Appeal Record to Blue Skies Alliance by Texas Commission on Environmental Quality re <u>67</u> Notice of Appeal. (jmr) (Entered: 12/18/2006)
02/26/2007	<u>72</u>	NOTICE of attorney receipt of Record on Appeal (svc) (Entered: 03/06/2007)
03/12/2007	<u>73</u>	NOTICE of Change of Address by Albert R Axe, Jr, Gary E Zausmer, counsel for Portland Cement Association, Ellis County, The Association of Electric Companies of Texas. New address is: Winstead PC, 401 Congress Avenue, Suite 2100, Austin, Tx 78701 (skt) (Entered: 03/12/2007)
04/08/2008	<u>74</u>	Opinion of USCA (certified copy) in accordance with USCA judgment re <u>67</u> Notice of Appeal filed by Texas Commission on Environmental Quality. The award of attorneys' fees is REVERSED. (jrb) (Entered: 04/08/2008)
04/08/2008	<u>75</u>	JUDGMENT/MANDATE of USCA as to <u>67</u> Notice of Appeal filed by Texas Commission on Environmental Quality. Issued as Mandate: 4/1/08. Ordered and adjudged that the judgment of the District Court is reversed. Further ordered that plaintiffs-appellees pay to intervenor-defendant-appellant the costs on appeal to be taxed by the Clerk of the Court. (jrb) (Entered: 04/08/2008)
04/08/2008		Appeal Record Returned: The electronic copy of the record has been recycled. (jrb) (Entered: 04/08/2008)
04/08/2008		USCA5 BILL OF COSTS by Texas Commission on Environmental Quality. (See #75 for image) (jrb) (Entered: 04/08/2008)

SETTLEMENT AGREEMENT REGARDING COSTS OF LITIGATION

This settlement agreement is entered into by and between Plaintiffs Missouri Coalition for the Environment and Jack and Leslie Warden (collectively "Plaintiffs") and the United States of America ("the United States"), on behalf of Defendant Stephen L. Johnson, in his official capacity as Administrator of the United States Environmental Protection Agency.

RECITAL

On September 14, 2005, the United States District Court for the Eastern District of Missouri in Case No. 4:04-CV-00660 (ERW) entered an order resolving Plaintiffs' claims. Among other things, the Court found that Plaintiffs are entitled to reasonable attorney fees in this case.

AGREEMENT

In consideration of the mutual promises contained herein, Plaintiffs and the United States agree as follows:

1. The United States agrees to pay, and Plaintiffs agree to accept, the sum of \$60,589 in full settlement of all claims by Plaintiffs for costs of litigation incurred with respect to this case. Payment of this sum shall serve to release any claims by Plaintiffs for costs of litigation (including reasonable attorney and expert witness fees) incurred in connection with this case. Said payment shall be made by electronic transfer to the following account:

Bank name: Bank of America

Bank address: 800 Market Street, St. Louis, MO 63101

Routing#: 026009593

Account#: 100100002663

Name on Account: Washington University

Type of Account: Checking

2. Notwithstanding any other provision of this Agreement, payment by the United States is subject to the availability of appropriated funds. No provision of this Agreement shall be interpreted as or constitute a commitment or requirement that the United States obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341.

3. Notwithstanding any language to the contrary in this Agreement, if the United States fails to transfer the funds to Plaintiffs as provided in paragraph 1 above by no later than sixty (60) days following the execution of this Agreement, then Plaintiffs may elect to re-file their claim for attorney's fees in the United States District Court.

4. The undersigned representatives certify that they are fully authorized by the parties they represent to enter into this Settlement Agreement.



ACCORDINGLY, the United States and Plaintiffs, by their duly authorized attorneys, whose signatures appear below, have executed this Agreement.

SUE ELLEN WOOLDRIDGE  
Assistant Attorney General

DATE: 12/11/05

Eric Hostetler  
ERIC G. HOSTETLER  
Environmental Defense Section  
U.S. Department of Justice  
P.O. Box 23986  
Washington, D.C. 20026-3986  
(202) 305-2326

For the United States and for Defendants

DATE: 11/23/05

Maxine I. Lipeles  
MAXINE I. LIPELES  
Interdisciplinary Environmental Clinic  
Washington University  
One Brookings Drive – Campus Box 1120  
St. Louis, Missouri 63130-4899  
(314) 935-5837

For the Plaintiffs

CLOSED

**U.S. District Court  
Eastern District of Missouri (LIVE) (St. Louis)  
CIVIL DOCKET FOR CASE #: 4:04-cv-00660-ERW**

Missouri Coalition for the Environment et al v. United States  
Environmental Protection Agency  
Assigned to: Honorable E. Richard Webber  
Member case: [\(View Member Case\)](#)  
Related Case: [4:04-cv-01059-ERW](#)  
Cause: 42:7413(b) Clean Air Act

Date Filed: 05/27/2004  
Date Terminated: 12/16/2005  
Jury Demand: None  
Nature of Suit: 893 Environmental Matters  
Jurisdiction: U.S. Government Defendant

Date Filed	#	Docket Text
05/27/2004	<u>1</u>	COMPLAINT against defendant United States Environmental Protection Agency 3 Summons(es) issued, Fee paid in the amount of \$150, Consents issued 4, , filed by Missouri Coalition for the Environment, Jack Warden, Leslie Warden. (Attachments: # <u>1</u> Civil Cover Sheet # <u>2</u> Original Filing Form)(CDD, ) (Entered: 05/28/2004)
05/27/2004	<u>2</u>	DISCLOSURE OF CORPORATION INTERESTS CERTIFICATE by Plaintiff Missouri Coalition for the Environment. (CDD, ) (Entered: 05/28/2004)
05/27/2004		Summons Issued (3 @ 60 days), as to defendant United States Environmental Protection Agency. (CDD, ) (Entered: 05/28/2004)
05/27/2004		Receipt # S2004-007284 in the amount of \$150.00 for CIVIL FILING FEE, CIVIL FILING FEE-2ND 1/2 on behalf of GOLDSTEIN, MAXINE. (CSW, ) (Entered: 05/28/2004)
06/01/2004	<u>3</u>	ORDERED that the Clerk reassign this action to another judge by the random selection process.. Signed by Judge David D. Noce on 6/1/04. (LGK, ) (Entered: 06/02/2004)
06/07/2004	<u>4</u>	ORDER REASSIGNING CASE. Case reassigned to Judge Frederick R. Buckles for all further proceedings. Judge David D. Noce no longer assigned to case. Signed by Deputy Clerk, Lisa Kresko, on 6/7/04. (LGK, ) (Entered: 06/07/2004)
06/16/2004	<u>5</u>	CJRA ORDER (jgw). Judge Frederick R. Buckles termed. Case reassigned to Judge E. Richard Webber for all further proceedings (KXS, ) Additional attachment(s) added on 6/16/2004 (KXS, ). (Entered: 06/16/2004)
07/20/2004	<u>6</u>	ENTRY of Appearance by Eric Hostetler Defendant United States Environmental Protection Agency. (Hostetler, Eric) (Entered: 07/20/2004)
07/20/2004	<u>7</u>	MOTION for Extension of Time to File Answer by Defendant United States Environmental Protection Agency. (Hostetler, Eric) (Entered: 07/20/2004)
07/26/2004		Docket Text ORDER: Defendant EPA's Unopposed Motion for Extension of Time to File Answer [doc. #7] is GRANTED. Defendant EPA's Answer shall be filed with this Court no later than August 11, 2004. So Ordered by Judge E. Richard Webber on 07/26/2004. (BAB) (Entered: 07/26/2004)
08/11/2004	<u>8</u>	ANSWER to Complaint by United States Environmental Protection Agency.(Hostetler, Eric) (Entered: 08/11/2004)

08/26/2004	<u>2</u>	RULE 16 ORDER. This case is assigned to Track: 2: Standard. Joint Scheduling Plan due by 9/10/2004. Rule 16 Conference set for 9/17/2004 10:00 AM in In Chambers before Honorable E. Richard Webber. Signed by Judge E. Richard Webber on 8/26/04. (KLH, ) (Entered: 08/26/2004)
09/08/2004		Docket Text ORDER: Due to a scheduling conflict and by agreement of all parties and this Court, the Rule 16 Conference is reset to September 28, 2004, at 8:45 a.m. Joint Proposed Scheduling Plan shall be filed with this Court no later than September 21, 2004. So Ordered by Judge E. Richard Webber on 09/08/2004. (BAB) (Entered: 09/08/2004)
09/21/2004	<u>10</u>	JOINT SCHEDULING PLAN by Plaintiffs Missouri Coalition for the Environment, Jack Warden, Leslie Warden.. (Lipeles, Maxine) (Entered: 09/21/2004)
09/28/2004	<u>11</u>	Minute Entry for proceedings held before Judge E. Richard Webber : Rule 16 Conference held on 9/28/2004. (Court Reporter or FTR Gold Operator initials:none.) (MCB) (Entered: 09/28/2004)
09/28/2004	<u>12</u>	CASE MANAGEMENT ORDER This case is assigned to Track: 1 Dispositive Motions due by 10/28/2004. Briefs in opposition shall be filed by November 22, 2004 and any reply briefs shall be filed by December 3, 2004. Signed by Judge E. Richard Webber on September 28, 2004. (MCB) (Entered: 09/28/2004)
10/28/2004	<u>13</u>	MOTION for Summary Judgment <i>Concerning Schedule for EPA's Review of Air Quality Criteria and NAAQS for Lead</i> by Defendant United States Environmental Protection Agency. (Attachments: # <u>1</u> Memorandum in Support of Motion for Summary Judgment# <u>2</u> Text of Proposed Order # <u>3</u> EPA's Statement of Uncontroverted Material Facts# <u>4</u> Declaration of Stephen D. Page# <u>5</u> Page Declaration: Attachment A# <u>6</u> Page Declaration: Attachment B# <u>7</u> Page Declaration: Attachment C# <u>8</u> Page Declaration: Attachment D (Part 1 of 9)# <u>9</u> Page Declaration: Attachment D (Part 2 of 9)# <u>10</u> Page Declaration: Attachment D (part 3 of 9)# <u>11</u> Page Declaration: Attachment D (part 4 of 9)# <u>12</u> Page Declaration: Attachment D (part 5 of 9)# <u>13</u> Page Declaration: Attachment D (part 6 of 9)# <u>14</u> Page Declaration: Attachment D (part 7 of 9)# <u>15</u> Page Declaration: Attachment D (part 8 of 9)# <u>16</u> Page Declaration: Attachment D (part 9 of 9))(Hostetler, Eric) (Entered: 10/28/2004)
10/28/2004	<u>14</u>	MOTION for Summary Judgment by Plaintiffs Missouri Coalition for the Environment, Jack Warden, Leslie Warden. (Attachments: # <u>1</u> Affidavit Stephen M. Mahfood# <u>2</u> Affidavit Dr. Bradley A. Evanoff, M.D., M.P.H.# <u>3</u> Affidavit Leslie and Jack Warden)(Lipeles, Maxine) (Entered: 10/28/2004)
10/28/2004	<u>15</u>	MEMORANDUM in Support of Motion re <u>14</u> MOTION for Summary Judgment filed by Plaintiffs Missouri Coalition for the Environment, Jack Warden, Leslie Warden. (Lipeles, Maxine) (Entered: 10/28/2004)
10/28/2004	<u>16</u>	STATEMENT of Material Facts re <u>14</u> MOTION for Summary Judgment filed by Plaintiffs Missouri Coalition for the Environment, Jack Warden, Leslie Warden. (Lipeles, Maxine) (Entered: 10/28/2004)
11/22/2004	<u>17</u>	MEMORANDUM in Opposition re <u>14</u> MOTION for Summary Judgment filed by Defendant United States Environmental Protection Agency. (Attachments: # <u>1</u> Declaration of Lester Grant# <u>2</u> Declaration of Bruce A. Morrison# <u>3</u> EPA's Response to Plaintiffs' Statement of Uncontraverted Material

		Facts)(Hostetler, Eric) (Entered: 11/22/2004)
11/22/2004	<u>18</u>	MEMORANDUM in Opposition re <u>13</u> MOTION for Summary Judgment <i>Concerning Schedule for EPA's Review of Air Quality Criteria and NAAQS for Lead</i> filed by Plaintiffs Missouri Coalition for the Environment, Jack Warden, Leslie Warden. (Attachments: # <u>1</u> Affidavit Statement of Dr. Needleman)(Lipeles, Maxine) (Entered: 11/22/2004)
11/22/2004	<u>19</u>	STATEMENT of Material Facts re <u>13</u> MOTION for Summary Judgment <i>Concerning Schedule for EPA's Review of Air Quality Criteria and NAAQS for Lead Response to EPA's Statement of Facts</i> filed by Plaintiffs Missouri Coalition for the Environment, Jack Warden, Leslie Warden. (Lipeles, Maxine) (Entered: 11/22/2004)
12/06/2004	<u>20</u>	Joint MOTION for Extension of: Time to File Reply Briefs by Defendant United States Environmental Protection Agency. (Hostetler, Eric) (Entered: 12/06/2004)
12/06/2004	<u>21</u>	REPLY to Response to Motion re <u>13</u> MOTION for Summary Judgment <i>Concerning Schedule for EPA's Review of Air Quality Criteria and NAAQS for Lead</i> filed by Defendant United States Environmental Protection Agency. (Attachments: # <u>1</u> Declaration of Dr. Karen M. Martin# <u>2</u> Second Declaration of Dr. Lester D. Grant)(Hostetler, Eric) (Entered: 12/06/2004)
12/06/2004		Docket Text ORDER: Joint Motion for Extension of Time [doc. #20] is GRANTED. Reply Briefs to pending Summary Judgment Motions shall be filed no later than December 6, 2004. So Ordered by Judge E. Richard Webber on 12/06/2004. (BAB) (Entered: 12/06/2004)
12/06/2004	<u>22</u>	REPLY to Response to Motion re <u>14</u> MOTION for Summary Judgment filed by Plaintiffs Missouri Coalition for the Environment, Jack Warden, Leslie Warden. (Attachments: # <u>1</u> Affidavit Second affidavit of Jack and Leslie Warden# <u>2</u> Exhibit Attachment A1 EPA Staff Paper Part 1 of 7# <u>3</u> Exhibit Attachment A2–EPA Staff Paper Part 2 of 7# <u>4</u> Exhibit Attachment A3– EPA Staff Paper Part 3 of 7# <u>5</u> Exhibit Attachment A4– EPA Staff Paper Part 4 of 7# <u>6</u> Exhibit Attachment A5– EPA Staff Paper Part 5 of 7# <u>7</u> Exhibit Attachment A6– EPA Staff Paper Part 6 of 7# <u>8</u> Exhibit Attachment A7– EPA Staff Paper Part 7 of 7# <u>9</u> Exhibit Attachment B1– EPA Lead Strategy Part 1 of 2# <u>10</u> Exhibit Attachment B2 – EPA Lead Strategy Part 2 of 2)(Lipeles, Maxine) (Entered: 12/06/2004)
01/13/2005	<u>23</u>	MOTION to Consolidate Cases Consolidate with higher case number 4:04–1059 by Defendant United States Environmental Protection Agency. (Attachments: # <u>1</u> Text of Proposed Order)(Hostetler, Eric) (Entered: 01/13/2005)
01/21/2005	<u>24</u>	MEMORANDUM in Opposition re <u>23</u> MOTION to Consolidate Cases Consolidate with higher case number 4:04–1059 filed by Plaintiffs Missouri Coalition for the Environment, Jack Warden, Leslie Warden. (Lipeles, Maxine) (Entered: 01/21/2005)
01/24/2005		Docket Text ORDER: Counsel for all parties shall appear before this Court on January 28, 2005, at 2:00 p.m. to discuss Defendant's Motion to Consolidate [doc. #23] this action with cause number 4:04CV01059. So Ordered by Judge E. Richard Webber. (BAB) (Entered: 01/24/2005)
01/27/2005	<u>25</u>	REPLY to Response to Motion re <u>23</u> MOTION to Consolidate Cases Consolidate with higher case number 4:04–1059 filed by Defendant United States Environmental Protection Agency.

		(Hostetler, Eric) (Entered: 01/27/2005)
01/28/2005	<u>26</u>	Minute Entry for proceedings held before Judge E. Richard Webber : In Court Hearing held on 1/28/2005. Parties present for hearing on motion to consolidate with high case number 4:04cv1059 JCH by Defendant US Environment [doc. #23] Arguments heard. Order to follow. (Court Reporter or FTR Gold Operator initials:Sue Moran.) (proceedings started: 2:00.) (proceedings ended: 2:40.) (MCB) (Entered: 01/28/2005)
01/31/2005	<u>27</u>	ORDER – IT IS HEREBY ORDERED that Defendant's Motion to Consolidate Cases [doc. #23] is GRANTED. IT IS FURTHER ORDERED that State of Missouri v. Michael O. Leavitt, Cause No. 4:04CV01059JCH be transferred to Judge E. Richard Webber. IT IS FURTHER ORDERED that Cause No. 4:04CV00660ERW is consolidated with Cause No. 4:04CV01059JCH. IT IS FURTHER ORDERED that all claims in Cause No. 4:04CV00660ERW and Cause No. 4:04CV01059JCH are before the Court in this consolidated proceeding. IT IS FURTHER ORDERED that all future pleadings shall be filed in Cause No. 4:04CV00660ERW. IT IS FURTHER ORDERED that State of Missouri v. Michael O. Leavitt, Cause No. 4:04CV01059JCH be administratively closed. IT IS FURTHER ORDERED that Counsel for all parties shall appear before this Court on February 8, 2005, at 9:00 a.m. for a status conference to discuss (1) whether there are any remaining issues of fact in the case and (2) a scheduling plan. IT IS FURTHER ORDERED that all parties shall meet, prepare and electronically file a Joint Scheduling Plan prior to the February 8, 2005 status conference. Signed by Judge E. Richard Webber on 1/31/2005. (JMW, ) (Entered: 02/01/2005)
02/07/2005	<u>28</u>	JOINT SCHEDULING PLAN by Defendant United States Environmental Protection Agency.. (Hostetler, Eric) (Entered: 02/07/2005)
02/07/2005	<u>29</u>	RESPONSE TO COURT ORDER ( <i>Reply in Support of Motion for Protective Order Filed in Case No. 04-1059</i> ) by Defendant United States Environmental Protection Agency. (Hostetler, Eric) (Entered: 02/07/2005)
02/07/2005	<u>30</u>	MOTION for Leave to Participate as Law Student Certified Under Missouri Supreme Court Rule 13 by Plaintiffs Missouri Coalition for the Environment, Jack Warden, Leslie Warden. (Lipeles, Maxine) Modified on 2/8/2005 (MCB). (Entered: 02/07/2005)
02/08/2005	<u>31</u>	Minute Entry for proceedings held before Judge E. Richard Webber : In Court Hearing held on 2/8/2005. Parties present for status conference/Rule 16. Counsel heard. Court granted Plaintiff's Motion for leave for Rebecca L. Schade and Jacqueline Hui to Participate as Law Student Certified Under Missouri Supreme Court Rule 13 [doc. #30]. Motions terminated: <u>30</u> MOTION for Leave to Participate as Law Student Certified Under Missouri Supreme Court Rule 13 filed by Missouri Coalition for the Environment, Jack Warden, Leslie Warden. (Court Reporter or FTR Gold Operator initials:G. Beilsmith.) (proceedings started: 9:04.) (proceedings ended: 9:30.) (MCB) (Entered: 02/08/2005)
02/14/2005	<u>32</u>	MOTION to Compel by Plaintiff Missouri, State of. (AuBuchon, Richard) (Entered: 02/14/2005)
02/16/2005	<u>33</u>	MEMORANDUM AND ORDER IT IS HEREBY ORDERED that Defendant's Motion for Judgment on the Pleadings [doc. #17 found in case no. 4:04CV1059 ERW] is GRANTED. This action as to Plaintiff State of Missouri is DISMISSED with

		prejudice. IT IS FURTHER ORDERED that Defendant's Motion for a Protective Order [doc. #25 found in case no. 4:04CV1059 ERW] is DISMISSED as moot. IT IS FURTHER ORDERED that Plaintiff State Of Missouri's Motion for Summary Judgment [doc. #13] found in case no. 4:04CV1059 ERW] is DISMISSED as moot. IT IS FURTHER ORDERED that Intervenor Association of Battery Recyclers' Response to Plaintiff Missouri Coalition for the Environment's Motion for Summary Judgment [doc. #14] shall be filed no later than March 15, 2005. Defendant shall have no more than 20 days to reply to Intervenor's Response. Plaintiff Missouri Coalition and Intervenor shall have no more than 10 days to file a surreply to Defendant's Reply to Intervenor's Response to Plaintiff's Motion for Summary Judgment. Signed by Judge E. Richard Webber on February 16, 2005. (MCB) (Entered: 02/16/2005)
02/16/2005	<u>34</u>	ORDER OF DISMISSAL IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant's Motion for Judgment on the Pleadings [doc. #17] is GRANTED. This action as to Plaintiff State of Missouri is DISMISSED without prejudice. Signed by Judge E. Richard Webber on February 16, 2005. (MCB) (Entered: 02/16/2005)
02/16/2005		ORDER RECEIPT: (see receipt) Wed Feb 16 13:52:55 CST 2005 (MCB, ) (Entered: 02/16/2005)
02/16/2005		ORDER RECEIPT: (see receipt) Wed Feb 16 13:53:03 CST 2005 (MCB, ) (Entered: 02/16/2005)
02/16/2005		Docket Text ORDER: State of Missouri's Motion to Compel [doc. #32] is DENIED AS MOOT. So Ordered by Judge E. Richard Webber. (BAB) Copy of notification sent to non-registered attorney on 2/17/2005 (BAK, ). (Entered: 02/16/2005)
02/25/2005	<u>35</u>	MOTION for Leave to File Amended Complaint & Motion to Reconsider by Plaintiff Missouri, State of. (AuBuchon, Richard) (Entered: 02/25/2005)
02/25/2005	<u>36</u>	AMENDED COMPLAINT against defendant United States Environmental Protection Agency Amendment to <u>27</u> Order,,,,, filed by Missouri, State of. Related document: <u>27</u> Order,,,,,(AuBuchon, Richard) (Entered: 02/25/2005)
03/03/2005	<u>37</u>	MEMORANDUM in Opposition re <u>35</u> MOTION for Leave to File Amended Complaint & Motion to Reconsider filed by Plaintiffs Missouri Coalition for the Environment, Jack Warden, Leslie Warden. (Lipeles, Maxine) (Entered: 03/03/2005)
03/04/2005		Docket Text ORDER: Counsel for all parties shall be available for a telephone Motion Hearing on Thursday, March 10, 2005, at 11:30 a.m., on Plaintiffs' Motion to Reconsider and for Leave to File Amended Complaint [doc. #35]. The Court will initiate this telephone hearing with counsel at the date and time stated above. So Ordered by Judge E. Richard Webber. (BAB) Modified on 3/4/2005 **Sent by regular mail to: Joseph P. Bindbeutel ATTORNEY GENERAL OF MISSOURI Assistant Attorney General 221 W. High Street P.O. Box 899 Jefferson City, MO 65102-0899(BDC). (Entered: 03/04/2005)
03/04/2005		Set Deadlines/Hearings in accordance with the court's docket text order issued this date: Motion Hearing set for 3/10/2005 11:30 AM by Telephone before Honorable E. Richard Webber. (BDC) **Modified on 3/4/2005- Sent by regular mail to: Joseph P. Bindbeutel ATTORNEY GENERAL OF MISSOURI Assistant Attorney General 221 W. High Street P.O. Box 899 Jefferson City, MO 65102-0899 (BDC). (Entered: 03/04/2005)



03/08/2005	<u>38</u>	MEMORANDUM in Opposition re <u>35</u> MOTION for Leave to File Amended Complaint & Motion to Reconsider filed by Defendant United States Environmental Protection Agency. (Hostetler, Eric) (Entered: 03/08/2005)
03/10/2005	<u>39</u>	Minute Entry for proceedings held before Judge E. Richard Webber : Motion Hearing held on 3/10/2005 re <u>35</u> MOTION for Leave to File Amended Complaint & Motion to Reconsider filed by Missouri, State of. Arguments of counsel heard. Order to follow. (Court Reporter or FTR Gold Operator initials: G. Beilsmith.) (proceedings started: 11:30.) (proceedings ended: 11:55.) (MCB) (Entered: 03/10/2005)
03/15/2005	<u>40</u>	MOTION for Summary Judgment by Intervenor Plaintiff Association of Battery Recyclers, Inc.. (Attachments: # <u>1</u> Memorandum in Support of Motion # <u>2</u> Statement of Uncontroverted Material Facts # <u>3</u> Exhibit 1 – November 2004 Federal Register Notice # <u>4</u> Exhibit 2 – January 2005 Federal Register Notice # <u>5</u> Exhibit 3 – Draft Work Plan # <u>6</u> Exhibit 4 – Public Comments Listing Studies # <u>7</u> Exhibit 5 – ALA v. Whitman EPA Motion # <u>8</u> Exhibit 6 – ALA v. Whitman Minute Order # <u>9</u> Exhibit 7 – ALA v. Whitman Consent Decree # <u>10</u> Certificate of Service)(Wigmore, Michael) (Entered: 03/15/2005)
03/15/2005	<u>41</u>	MEMORANDUM AND ORDER denying <u>35</u> Motion for Leave to file Amended Complaint. Signed by Judge E. Richard Webber on 3/15/05. (BAK, ) (Entered: 03/15/2005)
03/15/2005		ORDER RECEIPT: (see receipt) Tue Mar 15 13:36:07 CST 2005 (BAK, ) (Entered: 03/15/2005)
04/04/2005	<u>42</u>	RESPONSE in Opposition re <u>40</u> MOTION for Summary Judgment filed by Defendant United States Environmental Protection Agency. (Attachments: # <u>1</u> )(Hostetler, Eric) (Entered: 04/04/2005)
04/14/2005	<u>43</u>	MEMORANDUM in Opposition re <u>40</u> MOTION for Summary Judgment filed by Plaintiffs Missouri Coalition for the Environment, Jack Warden, Leslie Warden. (Attachments: # <u>1</u> Response to ABR's Statements of Uncontroverted Material Facts)(Lipeles, Maxine) (Entered: 04/14/2005)
04/18/2005	<u>44</u>	REPLY to Response to Motion re <u>40</u> MOTION for Summary Judgment filed by Intervenor Plaintiff Association of Battery Recyclers, Inc.. (Wigmore, Michael) (Entered: 04/18/2005)
07/12/2005	<u>45</u>	NOTICE by Plaintiffs Missouri Coalition for the Environment, Jack Warden, Leslie Warden Withdrawl of Student Attorneys: (Lipeles, Maxine) (Entered: 07/12/2005)
09/14/2005	<u>46</u>	MEMORANDUM AND ORDER: IT IS HEREBY ORDERED that Plaintiffs' request for declaratory relief is GRANTED. The Court declares that the EPA has failed to perform its nondiscretionary duty of reviewing the NAAQS for lead at five year intervals. IT IS FURTHER ORDERED that Plaintiffs' request for a mandatory injunction is GRANTED. Defendant shall complete the initial draft of the Criteria Document no later than December 1, 2005. The Criteria Document must be finalized no later than October 1, 2006. The initial draft of the Staff Paper shall be prepared no later than January 1, 2007. The Staff Paper must be finalized no later than November 1, 2007. The notice of proposed rulemaking shall be signed no later than May 1, 2008 for publication in the Federal Register. The public comment period shall be open for 60 days. The notice of final rulemaking concerning any revisions to the NAAQS shall be signed on or before September 1, 2008 for publication in the

		Federal Register. All tasks necessary for implementation shall also be completed on or before September 1, 2008. IT IS FURTHER ORDERED that Plaintiffs shall submit a Motion for Attorney fees documenting the attorney time spent on the case no later than October 17, 2005. Defendant shall respond with any objections no later than November 7, 2005. Plaintiffs shall file any reply within five (5) days thereafter. (thereby terminating doc.# <u>13</u> <u>14</u> and <u>40</u> ) Signed by Judge E. Richard Webber on 9/14/05. (BDC, ) (Entered: 09/14/2005)
10/17/2005	<u>47</u>	MOTION for Attorney Fees by Plaintiffs Missouri Coalition for the Environment, Jack Warden, Leslie Warden. (Attachments: # <u>1</u> Affidavit Affidavit of Maxine I. Lipeles)(Lipeles, Maxine) (Entered: 10/17/2005)
10/17/2005	<u>48</u>	MEMORANDUM in Support of Motion re <u>47</u> MOTION for Attorney Fees filed by Plaintiffs Missouri Coalition for the Environment, Jack Warden, Leslie Warden. (Lipeles, Maxine) (Entered: 10/17/2005)
11/07/2005	<u>49</u>	OBJECTION to <u>47</u> Bill of Costs / <i>Motion for Attorney's Fees</i> filed by Defendant United States Environmental Protection Agency. (Attachments: # <u>1</u> # <u>2</u> Exhibit)(Hostetler, Eric) (Entered: 11/07/2005)
11/08/2005		Docket Text ORDER: Counsel for all parties shall appear before this Court on November 22, 2005, at 9:00 a.m. to discuss Plaintiffs' Motion for Attorney Fees [doc. #47]. So Ordered by Judge E. Richard Webber. (BAB) (Entered: 11/08/2005)
11/09/2005		Docket Text ORDER: Due to a scheduling conflict and upon request of counsel, the Motion Hearing of November 22, 2005, will be held at 3:30 p.m., not 9:00 a.m. as previously scheduled. So Ordered by Judge E. Richard Webber. (BAB) (Entered: 11/09/2005)
11/14/2005	<u>50</u>	REPLY to Response to Motion re <u>47</u> MOTION for Attorney Fees filed by Plaintiffs Missouri Coalition for the Environment, Jack Warden, Leslie Warden. (Attachments: # <u>1</u> Affidavit Affidavit of Dr. Bradley# <u>2</u> Affidavit Supplemental Affidavit of Maxine Lipeles)(Lipeles, Maxine) (Entered: 11/14/2005)
11/18/2005	<u>51</u>	NOTICE of Settlement <i>and Joint Motion to Cancel Hearing on Fees</i> by United States Environmental Protection Agency (Hostetler, Eric) (Entered: 11/18/2005)
11/18/2005		Docket Text ORDER: Motion for Attorney Fees [doc. #47] is DENIED, as moot. The November 22, 2005 hearing is VACATED. So Ordered by Judge E. Richard Webber. (BAB) (Entered: 11/18/2005)
05/10/2007	<u>52</u>	MOTION for Partial Relief from Judgment by Defendant United States Environmental Protection Agency. (Attachments: # <u>1</u> Memorandum in Support of Motion# <u>2</u> Declaration of Stephen D. Page# <u>3</u> Text of Proposed Order)(Hostetler, Eric) Modified on 5/11/2007 (JMW), amended text. (Entered: 05/10/2007)
05/10/2007	<u>53</u>	NOTICE by Defendant United States Environmental Protection Agency Filing of Attachments to Declaration: (Attachments: # <u>1</u> Attachment A# <u>2</u> Attachment B (1 of 2)# <u>3</u> Attachment B (2 of 2)# <u>4</u> Attachment C# <u>5</u> Attachment D# <u>6</u> Attachment E)(Hostetler, Eric) (Entered: 05/10/2007)
05/14/2007	<u>54</u>	NOTICE by Defendant United States Environmental Protection Agency of Filing of Attachment to Declaration of Stephen Page: (Attachments: # <u>1</u> Attachment B, page 12)(Hostetler, Eric) (Entered: 05/14/2007)



05/17/2007	<u>55</u>	MEMORANDUM in Opposition re <u>52</u> MOTION to Alter Judgment filed by Plaintiff Missouri, State of. (Attachments: # <u>1</u> )(Iveson, H.) (Entered: 05/17/2007)
05/17/2007	<u>56</u>	MEMORANDUM in Opposition re <u>52</u> MOTION to Alter Judgment filed by Plaintiffs Missouri Coalition for the Environment, Jack Warden, Leslie Warden. (Attachments: # <u>1</u> Exhibit Exhibit A# <u>2</u> Exhibit Exhibit B# <u>3</u> Exhibit Exhibit C# <u>4</u> Exhibit Exhibit D# <u>5</u> Exhibit Exhibit E)(Lipeles, Maxine) (Entered: 05/17/2007)
05/23/2007	<u>57</u>	REPLY to Response to Motion re <u>52</u> MOTION to Alter Judgment filed by Defendant United States Environmental Protection Agency. (Hostetler, Eric) (Entered: 05/23/2007)
07/10/2007		Docket Text ORDER: Counsel for all interested parties shall appear before this Court on August 10, 2007, at 9:00 a.m. to address Defendant's Motion for Partial Relief from Judgment [doc. #52]. So Ordered by Judge E. Richard Webber. (BAB) (Entered: 07/10/2007)
07/10/2007		Docket Text ORDER: Upon oral request of counsel, the hearing on Defendant's Motion for Partial Relief from Judgment [doc. #52] will be held on August 17, 2007, at 10:00 a.m., not August 10th as previously scheduled. So Ordered by Judge E. Richard Webber. (BAB) (Entered: 07/10/2007)
08/17/2007	<u>58</u>	Minute Entry for proceedings held before Judge E. Richard Webber: Motion Hearing held on 8/17/2007 re <u>52</u> MOTION to Alter Judgment filed by United States Environmental Protection Agency. Arguments made. MOTION ORDERED DENIED. Order to issue. (Court Reporter or FTR Gold Operator initials: D. Kriegshauser.) (FTR Gold yes or no: no.) (proceedings started: 10:02.) (proceedings ended: 10:37.) Associated Cases: 4:04-cv-00660-ERW,4:04-cv-01059-ERW(KLH, ) (Entered: 08/17/2007)
08/24/2007	<u>59</u>	MEMORANDUM AND ORDER denying <u>52</u> Motion to Alter Judgment Signed by Judge E. Richard Webber on 8/24/07. Associated Cases: 4:04-cv-00660-ERW,4:04-cv-01059-ERW(BAK, ) (Entered: 08/24/2007)
04/28/2008	<u>60</u>	Consent MOTION to Alter Judgment by Defendant United States Environmental Protection Agency. (Attachments: # <u>1</u> Declaration, # <u>2</u> Text of Proposed Order)(Hostetler, Eric) (Entered: 04/28/2008)
04/29/2008		Docket Text ORDER: Consent Motion to Alter Judgment / Extension of Time [doc. #60] is GRANTED. Defendant shall have up to and including September 15, 2008, to sign a notice of final rulemaking concerning any revisions to the National Ambient Air Quality Standards for lead, and to complete tasks necessary for implementation of a revised NAAQS. So Ordered by Judge E. Richard Webber. (BAB) (Entered: 04/29/2008)
07/01/2008	<u>61</u>	MOTION to Alter Judgment <i>and Memorandum in Support</i> by Plaintiffs Missouri Coalition for the Environment, Jack Warden, Leslie Warden, Defendant United States Environmental Protection Agency. (Lipeles, Maxine) (Entered: 07/01/2008)
07/01/2008	<u>62</u>	<i>Proposed Order</i> re <u>61</u> by Plaintiffs Missouri Coalition for the Environment, Jack Warden, Leslie Warden, Defendant United States Environmental Protection Agency. (Lipeles, Maxine) Modified on 7/1/2008 (RJD). (Entered: 07/01/2008)
07/01/2008	<u>63</u>	ORDER granting <u>61</u> Motion to Alter Judgment. Signed by Honorable E. Richard Webber on 7/1/08. (RJD) (Entered: 07/01/2008)

	07/01/2008)
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McDonough, Eileen

SETTLEMENT AGREEMENT

WHEREAS, Plaintiffs Louisiana Environmental Action Network and Stephanie Anderson (hereinafter jointly referred to as "LEAN") have filed a complaint styled as *Louisiana Environmental Action Network v. Stephen L. Johnson*, No. 05-184 (M.D. La.), alleging that Mr. Johnson, the Administrator of the U.S. Environmental Protection Agency ("EPA"), failed to perform a nondiscretionary duty under section 505(b)(2) of the Clean Air Act ("CAA") to respond to LEAN's administrative petition to object to the Louisiana Department of Environmental Quality's grant of operating permit modifications for the ExxonMobil Refining and Supply Company's oil refinery in Baton Rouge, Louisiana;

WHEREAS, on June 29, 2005, EPA and LEAN (collectively, the "Parties") filed a stipulation of partial dismissal dismissing this action except for LEAN's claim for costs of litigation, including attorney fees, pursuant to CAA section 304(d), 42 U.S.C. § 7604(d);

WHEREAS, the Parties wish to resolve the claim for costs of litigation without further litigation;

NOW, THEREFORE, the Parties stipulate and agree as follows:

1. The United States shall pay the sum of \$1306.50 to LEAN in full and complete settlement of LEAN's claims for attorneys' fees and costs in the above-referenced matter. LEAN and EPA agree that the amount provided herein constitutes a fair, reasonable and full and complete settlement of all claims for attorney fees and costs under any provision of law that LEAN asserted or could have asserted in connection with this litigation. The payment from the United States shall be made by electronic wire transfer in accordance with instructions provided by LEAN.

2. The United States' obligation is subject to the availability of appropriated funds.

No provision of this Agreement shall be interpreted as or constitute a commitment or requirement

DEPT. OF JUSTICE - ENRD  
ENVIRONMENT DIVISION

05 DEC 16 P2:35

plea

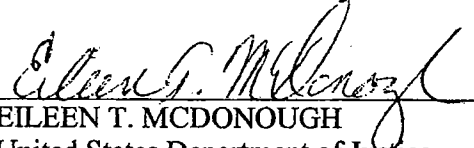
90-5-2-4-185611

that the United States obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341.

3. The Parties will file a stipulation of dismissal pursuant to Fed. R. Civ. P. 41 no later than ten business days after final execution of this Settlement Agreement.


4. The undersigned representatives of each Party certify that they are fully authorized by the Party that they represent to bind that Party to the terms of this Agreement.

SUE ELLEN WOOLDRIDGE  
Assistant Attorney General

  
EILEEN T. MCDONOUGH  
United States Department of Justice  
Environment & Natural Resources Division  
Environmental Defense Section  
P.O. Box 23986  
Washington, D.C. 20026-3986  
(202) 514-3126

For Defendant, Stephen L. Johnson

Dated: *November 28, 2005*

  
ADAM BABICH  
Tulane Environmental Law Clinic  
6329 Freret Street  
New Orleans, LA 70118-6321  
(504) 865-5789

For Plaintiffs, LEAN and Stephanie Anthony

Dated: *12/13/2005*

CLOSED

**U.S. District Court**  
**Middle District of Louisiana (Baton Rouge)**  
**CIVIL DOCKET FOR CASE #: 3:05-cv-00184-JVP-SCR**

Louisiana Environmental Action Network et al v. Johnson  
Assigned to: Judge John V. Parker  
Referred to: Magistrate Judge Stephen C. Riedlinger  
Cause: 42:7413(b) Clean Air Act

Date Filed: 03/18/2005  
Date Terminated: 12/28/2005  
Jury Demand: None  
Nature of Suit: 893 Environmental Matters  
Jurisdiction: U.S. Government Defendant

Date Filed	#	Docket Text
03/18/2005	<u>1</u>	COMPLAINT against Stephen L. Johnson ( Filing fee \$ 250.00 receipt number 86124.), filed by Louisiana Environmental Action Network, Stephanie Anthony.(DCB, ) (Entered: 03/18/2005)
03/18/2005	<u>2</u>	NOTICE of Supervising Attorney's Introduction of Student Practitioner with Dean's Certification and Client's Consent (DCB, ) (Entered: 03/18/2005)
03/18/2005	<u>3</u>	Summons Issued as to Stephen L. Johnson. (DCB, ) (Entered: 03/18/2005)
03/23/2005	<u>4</u>	90 DAY CONFERENCE ORDER: Scheduling Conference set for 7/14/2005 at 10:00 AM before Magistrate Judge Stephen C. Riedlinger. Status Report due by 7/4/2005.. Signed by Judge Stephen C. Riedlinger on 8/23/05. (DCB, ) (Entered: 03/23/2005)
04/11/2005	<u>5</u>	SUMMONS Returned Executed by Louisiana Environmental Action Network, Stephanie Anthony. Stephen L. Johnson served on 4/8/2005, answer due 4/28/2005. (DCB, ) (Entered: 04/11/2005)
06/27/2005	<u>6</u>	MOTION for Extension of Time to File Answer to <u>1</u> Complaint by Stephen L. Johnson. (NLT, ) (Entered: 06/28/2005)
06/28/2005	<u>7</u>	ORDER granting <u>6</u> Motion for Extension of Time to Answer <u>1</u> Complaint. Stephen L. Johnson answer due 6/29/2005. . Signed by Judge Stephen C. Riedlinger on 06/28/2005.(This is a TEXT ENTRY ONLY. There is no hyperlink or PDF document associated with this entry) (Riedlinger, Stephen) (Entered: 06/28/2005)
06/29/2005	<u>8</u>	STIPULATION of Partial Dismissal by Louisiana Environmental Action Network, Stephanie Anthony, Stephen L. Johnson. (SAH, ) (Entered: 06/30/2005)
06/29/2005	<u>9</u>	STATUS REPORT by Louisiana Environmental Action Network, Stephanie Anthony, Stephen L. Johnson. (SAH, ) (Entered: 06/30/2005)
07/01/2005	<u>10</u>	ORDER The parties shall file a status report as to whether the claim for costs of litigation has been resolved. If not, the parties shall propose a briefing schedule. The conference scheduled for July 14, 2005, is cancelled.. Signed by Judge Stephen C. Riedlinger on 7/1/05.(DCB, ) (Entered: 07/01/2005)
07/01/2005	<u>11</u>	ORDER re <u>8</u> Stipulation of Dismissal filed by Louisiana Environmental Action Network,, Stephanie Anthony,, Stephen L. Johnson. The issue of pla's claim for costs of litigation (including attorneys fees) pursuant to 42 USC 7604(d) is hereby referred to to Magistrate Judge Stephen Riedlinger. Signed by Judge John V. Parker on 7/1/05.(DCB, ) (Entered: 07/01/2005)
10/24/2005	<u>12</u>	NOTICE OF CONFERENCE : Telephone Status Conference set for 11/21/2005 at 09:30 AM before Magistrate Judge Stephen C. Riedlinger. (SAH, ) (Entered: 10/24/2005)
11/21/2005	<u>13</u>	Minute Entry / STATUS CONFERENCE REPORT... for proceedings held before Judge Stephen C. Riedlinger : Telephone Conference held on

Desert Rock Energy Co., LLC v. EPA  
No. 4:08-cv-872 (S.D. Tex.)  
Gunter Declaration  
Exhibit B4, page 3

		11/21/2005.... Counsel advised that the parties have reached an agreement in principle to resolve the remainder of the case... (SAH, ) (Entered: 11/21/2005)
12/28/2005	<u>14</u>	Notice for Voluntary Dismissal by Louisiana Environmental Action Network and Stephanie Anthony. (NLT, ) Modified on 1/23/2006 to correct entry (NLT, ). (Entered: 12/28/2005)

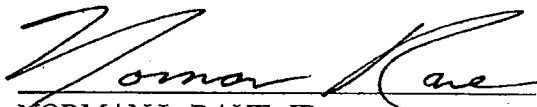
### SETTLEMENT AGREEMENT FOR ATTORNEYS' FEES

Plaintiffs Our Children's Earth Foundation and Sierra Club (collectively "Plaintiffs") and defendants United States Environmental Protection Agency and Stephen L. Johnson (collectively "EPA") enter into the following agreement to resolve Plaintiffs' claims for attorneys' fees and costs in the matter of *Our Children's Earth Foundation and Sierra Club v. United States Environmental Protection Agency and Stephen L. Johnson*, Case No. C 05-00094 CW (N.D. Cal.).

EPA agrees to pay Plaintiffs, and Plaintiffs agree to accept, the total amount of thirty-three thousand ninety-one dollars (\$33,091) in full settlement of all claims for costs of litigation incurred in the above action up to and including the date of execution of this agreement. This settlement agreement shall not be interpreted to preclude any rights plaintiffs may have to secure payment of any costs or attorneys' fees they may incur in this matter after the date of execution of this agreement. Payment will be made as soon as reasonably practicable by electronic transfer to plaintiff Our Children's Earth.

For EPA:

SUE ELLEN WOOLDRIDGE  
Assistant Attorney General  
Environment and Natural Resources Division



NORMAN L. RAVE, JR.  
Trial Attorney  
United States Department of Justice

Date: Jan. 11, 2006

For Plaintiffs:

Reed Zars  
REED ZARS

Date: 1/16/06



ADRMOP, CLOSED, E-Filing

**U.S. District Court  
California Northern District (Oakland)  
CIVIL DOCKET FOR CASE #: 4:05-cv-00094-CW**

Our Children's Earth Foundation & Sierra Club v. The United  
States Environmental Protection Agency et al  
Assigned to: Hon. Claudia Wilken  
Demand: \$0  
Cause: 42:7604 Clear Air Act (Emission Standards)

Date Filed: 01/06/2005  
Date Terminated: 11/02/2005  
Jury Demand: None  
Nature of Suit: 893 Environmental Matters  
Jurisdiction: U.S. Government Defendant

Date Filed	#	Docket Text
01/06/2005	<u>1</u>	COMPLAINT - [Summons Issued] against The United States Environmental Protection Agency & Michael Leavitt, [Filing Fee: \$150.00, Receipt Number 3367843]. Filed by Plaintiff Our Children's Earth Foundation & Sierra Club. (tn, COURT STAFF) (Filed on 1/6/2005) Additional attachment(s) added on 1/13/2005 (tn, COURT STAFF). (Entered: 01/10/2005)
01/06/2005		SUMMONS Issued as to Kevin V. Ryan, United States Attorney on behalf of Defendants The United States Environmental Protection Agency & Michael O. Leavitt. (tn, COURT STAFF) (Entered: 01/10/2005)
01/06/2005		Summons Issued as to The United States Environmental Protection Agency, Michael O. Leavitt. (tn, COURT STAFF) (Filed on 1/6/2005) (Entered: 01/10/2005)
01/06/2005		SUMMONS Issued as to John Ashcroft, United States Attorney General on behalf of Defendants The United States Environmental Protection Agency & Michael O. Leavitt. (tn, COURT STAFF) (Entered: 01/10/2005)
01/06/2005	<u>2</u>	ADR SCHEDULING ORDER: Case Management Statement due by 5/16/2005 & Initial Case Management Conference set for 5/23/2005 04:00 PM. (Attachments: # Standing Order). (tn, COURT STAFF) (Filed on 1/6/2005) (Entered: 01/10/2005)
01/06/2005	<u>3</u>	CERTIFICATION of Interested Entities or Persons Filed by Plaintiffs Our Children's Earth Foundation & Sierra Club. (tn, COURT STAFF) (Filed on 1/6/2005) (Entered: 01/10/2005)
01/06/2005		CASE DESIGNATED for Electronic Filing. (tn, COURT STAFF) (Entered: 01/10/2005)
01/14/2005	<u>4</u>	SERVICE OF SUMMONS Returned Executed Upon Defendants The United States Environmental Protection Agency & Michael O. Leavitt along with the United States Attorney General & the United States Attorney's Office, Served by Certified Mail on 1/13/2005. (tn, COURT STAFF) (Filed on 1/14/2005) (Entered: 01/20/2005)
02/03/2005	<u>5</u>	CONSENT to Proceed Before a US Magistrate Judge by Our Children's Earth Foundation & Sierra Club.. (Costa, Michael) (Filed on 2/3/2005) (Entered: 02/03/2005)
03/01/2005	<u>6</u>	Declination to Proceed Before a U.S. Magistrate Judge by The United States Environmental Protection Agency, Michael O. Leavitt. (Rave, Norman) (Filed on 3/1/2005) (Entered: 03/01/2005)
03/01/2005	<u>7</u>	CLERK'S NOTICE of Impending Reassignment to U.S. District Judge (ls, COURT STAFF) (Filed on 3/1/2005) (Entered: 03/01/2005)
03/02/2005	<u>8</u>	ORDER REASSIGNING CASE. Case reassigned to Judge Claudia Wilken for all further proceedings. Judge Bernard Zimmerman no longer assigned to case. Signed by Executive Committee on 03/02/05. (mab, COURT STAFF) (Filed on 3/2/2005) (Entered: 03/02/2005)
03/02/2005	<u>9</u>	CASE MANAGEMENT SCHEDULING ORDER FOR REASSIGNED CIVIL CASE: Case Management Conference set for 5/27/2005 01:30 PM.. Signed by Judge Claudia Wilken on 3/2/05. (scc, COURT STAFF) (Filed on 3/2/2005) (Entered: 03/02/2005)

03/15/2005	<u>10</u>	ANSWER to Complaint byThe United States Environmental Protection Agency, Michael O. Leavitt. (Rave, Norman) (Filed on 3/15/2005) (Entered: 03/15/2005)
03/25/2005	11	MOTION to Intervene filed by Intervenors American Petroleum Institute and National Petrochemical &Refiners Association. (cp, COURT STAFF) (Filed on 3/25/2005) (Entered: 03/25/2005)
03/25/2005	12	MEMORANDUM in Support re 11 MOTION to Intervene filed byIntervenors American Petroleum Institute and National Petrochemical &Refiners Association(Related document(s) 11 ) (cp, COURT STAFF) (Filed on 3/25/2005) (Entered: 03/25/2005)
03/25/2005	13	Declaration of Harry M. Ng in Support of 11 MOTION to Intervene filed byIntervenors American Petroleum Institute and National Petrochemical &Refiners Association(Related document(s) 11 ) (cp, COURT STAFF) (Filed on 3/25/2005) (Entered: 03/25/2005)
03/25/2005	14	Declaration of Bob Slaughter in Support of 11 MOTION to Intervene filed byIntervenors American Petroleum Institute and National Petrochemical &Refiners Association (Related document(s) 11 ) (cp, COURT STAFF) (Filed on 3/25/2005) (Entered: 03/25/2005)
03/25/2005	15	Disclosure statement of Intervenor American Petroleum Institute filed by Intervenors American Petroleum Institute and National Petrochemical &Refiners Association(cp, COURT STAFF) (Filed on 3/25/2005) (Entered: 03/25/2005)
03/25/2005	16	Disclosure statement of Intervenor National Petrochemical and Refiners Association filed by Intervenors American Petroleum Institute and National Petrochemical &Refiners Association (cp, COURT STAFF) (Filed on 3/25/2005) (Entered: 03/25/2005)
03/25/2005	17	CERTIFICATE OF SERVICE re 11 MOTION to Intervene, 12 Memorandum in Support, 13 Declaration in Support, 14 Declaration in Support, 15 Notice (Other), 16 Notice (Other) (cp, COURT STAFF) (Filed on 3/25/2005) (Entered: 03/25/2005)
03/30/2005	<u>18</u>	CERTIFICATE OF SERVICE by Our Children's Earth Foundation &Sierra Club re <u>9</u> Case Management Scheduling Order (Costa, Michael) (Filed on 3/30/2005) (Entered: 03/30/2005)
04/05/2005	<u>19</u>	CLERK'S NOTICE TAKING MOTION UNDER SUBMISSION. (scc, COURT STAFF) (Filed on 4/5/2005) (Entered: 04/05/2005)
04/08/2005	<u>20</u>	Memorandum in Opposition of <i>Intervention and Certificate of Service</i> filed byOur Children's Earth Foundation &Sierra Club. (Costa, Michael) (Filed on 4/8/2005) (Entered: 04/08/2005)
04/18/2005	21	Declaration of Shanoul Antonio filed byIntervenor-applicants American Petroleum Institute and National Petrochemical &Refiners Association(cp, COURT STAFF) (Filed on 4/18/2005) (Entered: 04/20/2005)
04/18/2005	22	Stipulated request for order extending time to reply to plaintiffs' opposition to American Petroleum Institute and National Petrochemical &Refiners Association's motion to intervene filed by Intervenor-applications American Petroleum Institute and National Petrochemical &Refiners Association. (cp, COURT STAFF) (Filed on 4/18/2005) (Entered: 04/20/2005)
04/18/2005	23	Reply to Opposition re 11 MOTION to Intervene filed by American Petroleum Institute and National Petrochemical &Refiners Association (cp, COURT STAFF) (Filed on 4/18/2005) (Entered: 04/20/2005)
04/18/2005	24	CERTIFICATE OF SERVICE re 23 Reply to Opposition (cp, COURT STAFF) (Filed on 4/18/2005) (Entered: 04/20/2005)
04/22/2005	<u>25</u>	ORDER re 22 Granting Stipulated request for order extending time to reply to plaintiffs' opposition to American Petroleum Institute and National Petrochemical &Refiners Association's motion to intervene. Signed by Judge Claudia Wilken on 4/22/05. (scc, COURT STAFF) (Filed on 4/22/2005) (Entered: 04/22/2005)

05/04/2005	<u>26</u>	ORDER by Judge Claudia Wilken granting in part and denying in part 11 Motion to Intervene (scc, COURT STAFF) (Filed on 5/4/2005) (Entered: 05/04/2005)
05/19/2005	<u>27</u>	Joint MOTION to Continue <i>Case Management Conference, or in the Alternative to Conduct Case Management Conference by Telephone</i> filed by The United States Environmental Protection Agency, Michael O. Leavitt. (Attachments: # <u>1</u> Proposed Order)(Rave, Norman) (Filed on 5/19/2005) (Entered: 05/19/2005)
05/19/2005	<u>28</u>	MOTION to Appear by Telephone <i>at Joint Case Management Conference</i> filed by American Petroleum Institute, National Petrochemical & Refiners Association. (Attachments: # <u>1</u> Proposed Order Granting Telephonic Appearance)(Duncan, Laura) (Filed on 5/19/2005) (Entered: 05/19/2005)
05/19/2005	<u>29</u>	Memorandum in Opposition re <u>27</u> Joint MOTION to Continue <i>Case Management Conference, or in the Alternative to Conduct Case Management Conference by Telephone</i> filed by American Petroleum Institute, National Petrochemical & Refiners Association. (Duncan, Laura) (Filed on 5/19/2005) (Entered: 05/19/2005)
05/20/2005	<u>30</u>	Reply to Opposition re <u>27</u> Joint MOTION to Continue <i>Case Management Conference, or in the Alternative to Conduct Case Management Conference by Telephone</i> filed by The United States Environmental Protection Agency, Michael O. Leavitt. (Rave, Norman) (Filed on 5/20/2005) (Entered: 05/20/2005)
05/23/2005	<u>31</u>	ORDER by Judge Claudia Wilken granting <u>27</u> Motion to Continue Case Management Conference. CMC set for 6/24/05 at 1:30 p.m. (scc, COURT STAFF) (Filed on 5/23/2005) (Entered: 05/23/2005)
05/24/2005	<u>32</u>	ORDER by Judge Claudia Wilken granting <u>28</u> Motion to Appear by Telephone (scc, COURT STAFF) (Filed on 5/24/2005) (Entered: 05/24/2005)
06/14/2005	<u>33</u>	Joint MOTION to Continue <i>Case Management Conference and Notice of Settlement in Principle</i> filed by The United States Environmental Protection Agency, Michael O. Leavitt. (Attachments: # <u>1</u> Proposed Order)(Rave, Norman) (Filed on 6/14/2005) (Entered: 06/14/2005)
06/17/2005	<u>34</u>	ORDER by Judge Claudia Wilken granting <u>33</u> Motion to Continue Case Management Conf. CMC continued to 8/19/05 at 10:00 a.m. (scc, COURT STAFF) (Filed on 6/17/2005) (Entered: 06/17/2005)
07/15/2005	<u>35</u>	Joint MOTION Govern Further Proceedings filed by The United States Environmental Protection Agency, Michael O. Leavitt. (Attachments: # <u>1</u> Proposed Order)(Rave, Norman) (Filed on 7/15/2005) (Entered: 07/15/2005)
07/18/2005	<u>36</u>	ORDER by Judge Claudia Wilken granting in part and denying in part <u>35</u> MOTION Governing Further Proceedings. CMC remains set for 8/19/05. (scc, COURT STAFF) (Filed on 7/18/2005) (Entered: 07/18/2005)
07/22/2005	<u>37</u>	NOTICE by The United States Environmental Protection Agency, Michael O. Leavitt <i>of Lodging of Consent Decree</i> (Attachments: # <u>1</u> Consent Decree)(Rave, Norman) (Filed on 7/22/2005) (Entered: 07/22/2005)
08/10/2005	<u>38</u>	Joint MOTION to Appear by Telephone filed by The United States Environmental Protection Agency, Michael O. Leavitt. Motion Hearing set for 8/19/2005 10:00 AM in Courtroom 2, 4th Floor, Oakland. (Attachments: # <u>1</u> Proposed Order Granting Motion to Conduct Conference by Telephone)(Rave, Norman) (Filed on 8/10/2005) (Entered: 08/10/2005)
08/15/2005	<u>39</u>	ORDER by Judge Claudia Wilken granting <u>38</u> Motion to Appear by Telephone. CMC continued to 11/18/05 at 1:30 p.m. (scc, COURT STAFF) (Filed on 8/15/2005) (Entered: 08/15/2005)
10/26/2005	<u>40</u>	Joint MOTION to Enter Consent Decree filed by The United States Environmental Protection Agency, Michael O. Leavitt. (Rave, Norman) (Filed on 10/26/2005) Modified on 10/27/2005 (cp, COURT STAFF). (Entered: 10/26/2005)
10/31/2005	<u>41</u>	ORDER by Judge Claudia Wilken granting <u>40</u> Motion to Approve Consent Judgment (scc, COURT STAFF) (Filed on 10/31/2005) (Entered: 10/31/2005)

11/02/2005	<u>42</u>	ORDER OF DISMISSAL. Signed by Judge Claudia Wilken on 11/2/05. (scc, COURT STAFF) (Filed on 11/2/2005) (Entered: 11/02/2005)
11/03/2005	<u>43</u>	STIPULATION <i>to extend time to file motion for attorneys' fees</i> by Our Children's Earth Foundation & Sierra Club. (Attachments: # <u>1</u> Proposed Order)(Zars, Reed) (Filed on 11/3/2005) (Entered: 11/03/2005)
11/08/2005	<u>44</u>	ORDER re <u>43</u> Granting STIPULATION to extend time to file motion for attorneys' fees. Signed by Judge Claudia Wilken on 11/8/05. (scc, COURT STAFF) (Filed on 11/8/2005) (Entered: 11/08/2005)
12/14/2005	<u>45</u>	STIPULATION (2nd) to Extend Time to File Motion for Attorneys Fees by Our Children's Earth Foundation & Sierra Club. (Attachments: # <u>1</u> Proposed Order)(Hays, George) (Filed on 12/14/2005) (Entered: 12/14/2005)
12/15/2005	<u>46</u>	ORDER re <u>45</u> Granting STIPULATION (2nd) to Extend Time to File Motion for Attorneys Fees. Signed by Judge Claudia Wilken on 12/15/05. (scc, COURT STAFF) (Filed on 12/15/2005) (Entered: 12/15/2005)

AE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

SIERRA CLUB and the AMERICAN  
BOTTOM CONSERVANCY,

Plaintiffs,

v.

STEPHEN L. JOHNSON, in his official  
capacity as acting Administrator, United  
States Environmental Protection Agency,

Defendant.

Hon. Samuel Der-Yeghiyan

Case No. 05-C-4425

CONSENT DECREE

WHEREAS, the Sierra Club and the American Bottom Conservancy (collectively "Plaintiffs") have submitted, pursuant to section 505(b)(2) of the Clean Air Act, 42 U.S.C. § 7661d(b)(2), an administrative petition to the Administrator of the U.S. Environmental Protection Agency ("EPA"), requesting that he object to a Title V operating permit proposed by the Illinois Environmental Protection Agency for an incinerator in the State of Illinois known as the Onyx Environmental Services waste incinerator ("Onyx Incinerator");

WHEREAS, the Complaint in this case alleges that EPA has a nondiscretionary duty under Clean Air Act section 505(b)(2) to respond within 60 days of the filing of the petition regarding the Onyx Incinerator, and that EPA has not done so;

WHEREAS, the Plaintiffs contend that they are entitled, pursuant to Clean Air Act section 304(d), 42 U.S.C. § 7604(d), to an award of their costs of litigation (including reasonable attorneys' fees) with respect to the claims asserted in the above-captioned matter;

WHEREAS, Plaintiffs and EPA (collectively the "Parties") wish to effect a settlement of the above-captioned matter, including Plaintiffs' claims for costs of litigation, including reasonable attorneys' fees, without expensive and protracted litigation;

WHEREAS, the Parties have agreed to a settlement without admission of any issue of fact or law;

WHEREAS, by entering into this Decree, the Parties do not waive or limit any claim or defense, on any grounds, related to any final EPA action approving, disapproving, and/or modifying, revoking or terminating a Title V permit for the Onyx Incinerator;

WHEREAS, the Parties consider this Decree to be an adequate and equitable resolution of all of the claims in the above-captioned matter; and

WHEREAS, the Court, by entering this Decree, finds that the Decree is fair, reasonable, in the public interest, and consistent with the Clean Air Act, 42 U.S.C. §§ 7401-7671q.

NOW THEREFORE, before the taking of testimony, without trial or determination of any issue of fact or law, and upon the consent of the Parties, it is hereby ordered, adjudged and decreed that:

1. EPA shall sign a response to the Plaintiffs' petition by February 1, 2006. Once EPA signs that response, EPA shall provide written notice to the Plaintiffs as expeditiously as possible.

2. The United States shall pay \$3,036.66 to the Plaintiffs by electronic funds transfers to the following account:

Bank Name: Wells Fargo Bank

Bank Address: 420 Montgomery St., San Francisco, CA 94104



ABA Routing #: 121000248

Account #: 4159389881

Name of Account: Sierra Club, 85 Second St, 2nd Fl, San Francisco, CA 94105

3. The Parties agree and acknowledge that before this Decree is entered by the Court, EPA must provide notice of this Decree in the Federal Register and an opportunity for public comment pursuant to Clean Air Act section 113(g), 42 U.S.C. § 7413(g). After this Decree has undergone notice and comment, the Administrator and/or the Attorney General, as appropriate, shall promptly consider any such written comments in determining whether to withdraw or withhold their consent to the Decree, in accordance with section 113(g) of the Clean Air Act. Once the Administrator and/or the Attorney General elect whether or not to withdraw or withhold their consent to this Decree, EPA shall provide written notice of that election to the Plaintiffs as expeditiously as possible. If the Administrator and/or the Attorney General do not elect to withdraw or withhold their consent, EPA shall promptly file a motion that requests the Court to enter this Decree.

4. The Parties may extend the deadline in Paragraph 1, or otherwise modify this Decree, by written stipulation executed by counsel for the Parties and filed with the Court.

5. If EPA fails to meet the deadline described in Paragraph 1, Plaintiffs' sole remedy shall be the right to move the Court subject to the process set out in Paragraph 11 to lift any stay of proceedings then in effect and reactivate this litigation.

6. Nothing in this Decree shall be construed to limit or modify the discretion accorded EPA by the Clean Air Act and by general principles of administrative law, including the discretion to alter, amend or revise any responses and/or final actions contemplated by this Decree. EPA's obligation to perform the action specified in Paragraphs 1 by the time specified

therein does not constitute a limitation or modification of EPA's discretion within the meaning of this paragraph.

7. Nothing in this Decree shall be construed to confer upon the district court jurisdiction to review any decision, either procedural or substantive, to be made by EPA pursuant to this Decree. Nothing in this Decree shall be construed to confer upon the district court jurisdiction to review any issues that are within the exclusive jurisdiction of the United States Courts of Appeals pursuant to sections 307(b)(1) and 505 of the Clean Air Act, 42 U.S.C. §§ 7607(b)(1), 7661d.

8. The obligations imposed upon EPA under this Decree can only be undertaken using appropriated funds. No provision of this Decree shall be interpreted as or constitute a commitment or requirement that EPA obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable federal law. In the event that sufficient appropriated funding is not available, the Parties shall attempt to adjust the obligations in Paragraphs 1 through 3 accordingly.

9. Plaintiffs agree that payment pursuant to Paragraph 2 shall be in complete settlement of all claims for litigation costs, including reasonable attorneys' fees, under any provision of law they have asserted or could have asserted in connection with the above-captioned matter. Upon payment as provided in Paragraph 2, Plaintiffs discharge and covenant not to sue the United States, including EPA, for any claims regarding such fees and costs.

10. Any notices required or provided for by this Decree shall be made in writing, via facsimile or other means, and sent to the following:



**For Plaintiffs:**

Bruce Nilles  
Sierra Club  
200 N. Michigan Ave., Suite 505  
Chicago, IL 60601  
Fax: (312) 251-1780

David Bender  
Garvey McNeil & McGillivray, S.C.  
634 W. Main Street, Suite 101  
Madison, WI 53703  
Fax: (608) 256-1003

**For Defendant:**

Heather E. Gange  
U.S. Department of Justice  
Environment & Natural Resources  
Division

Environmental Defense Section  
P.O. Box 23986  
Washington, DC 20026-3986  
Fax: (202) 514-8865

Paul Versace  
Office of General Counsel  
U.S. Environmental Protection Agency  
Ariel Rios Bldg; MC 2377A  
1200 Pennsylvania Ave., N.W.  
Washington, DC 20460  
Fax: (202) 564-5432

11. In the event of a dispute between the Parties concerning the interpretation or implementation of any aspect of this Decree, the disputing party shall provide the other Parties with a written notice outlining the nature of the dispute and requesting informal negotiations. If the Parties cannot reach an agreed-upon resolution within five (5) business days after receipt of the notice, any party may move the Court to resolve the dispute.

12. Subject to the process set out in Paragraph 11:

(a) this Court shall retain jurisdiction over the above-captioned matter for the purpose of enabling the Parties to apply to the Court for any further orders that may be necessary to construe, implement or enforce compliance with the terms and conditions set forth in this Decree; and

(b) the Court may modify the obligations of this Decree for good cause shown by any Party.

13. No motion or other proceeding seeking to enforce this Decree or for contempt of Court shall be properly filed, unless the Plaintiffs have followed the procedure set forth in Paragraph 11 and provided EPA with written notice received at least five business days before the filing of such motion or proceeding.

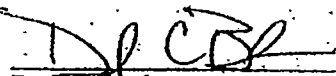
14. When EPA's obligations under Paragraphs 1 and 2 have been completed, the above-captioned matter shall be dismissed with prejudice. EPA shall file the appropriate notice with the Court so that the Clerk may dismiss the case with prejudice.

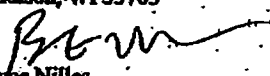
15. The obligations of this Decree and this Court's jurisdiction over this case shall terminate upon completion of all requirements of this Decree.

16. The undersigned representatives of each Party certify that they are fully authorized by the Party that they represent to bind that Party to the terms of this Decree.

**COUNSEL FOR PLAINTIFFS:**

**Dated: December 5, 2005**

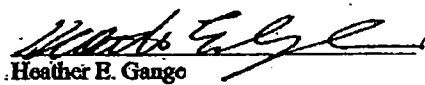
  
David C. Bender  
Garvey McNeil & McGillivray, S.C.  
634 W. Main Street, Suite 101  
Madison, WI 53703

  
Bruce Nilles  
Sierra Club  
200 N. Michigan Ave., Suite 505  
Chicago, IL 60601

**COUNSEL FOR DEFENDANT:**

Dated: December 20, 2005

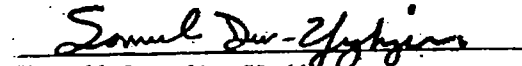
Sue Ellen Wooldridge  
Assistant Attorney General  
Environment & Natural Resources Division

  
Heather E. Gango  
U.S. Department of Justice  
Environment & Natural Resources Division  
Environmental Defense Section  
P.O. Box 23986  
Washington, DC 20026-3986

Paul Versace  
Office of General Counsel  
U.S. Environmental Protection Agency  
Ariel Rios Bldg., MC 2377A  
1200 Pennsylvania Ave., N.W.  
Washington, DC 20460

**IT IS SO ORDERED.**

Dated: February 24, 2006

  
Honorable Samuel Der-Yeghian,  
U.S. District Court Judge

CLOSED, KEYS, TERMED

**United States District Court**  
**Northern District of Illinois – CM/ECF LIVE, Ver 3.2.2 (Chicago)**  
**CIVIL DOCKET FOR CASE #: 1:05-cv-04425**

Sierra Club et al v. Johnson  
Assigned to: Honorable Samuel Der-Yeghiayan  
Cause: 42:7604 Clear Air Act (Emission Standards)

Date Filed: 08/02/2005  
Date Terminated: 02/24/2006  
Jury Demand: None  
Nature of Suit: 893 Environmental Matters  
Jurisdiction: U.S. Government Defendant

Date Filed	#	Docket Text
08/02/2005	<u>1</u>	COMPLAINT filed by plaintiffs.(vmj, ) Modified on 8/19/2008 (kj, ). (Entered: 08/04/2005)
08/02/2005	<u>2</u>	CIVIL Cover Sheet (vmj, ) (Entered: 08/04/2005)
08/02/2005	<u>3</u>	ATTORNEY Appearance for Plaintiffs Sierra Club, American Bottom Conservancy by David Bender, Bruce Edward Nilles. (vmj, ) (Entered: 08/04/2005)
08/02/2005	<u>4</u>	3 SUMMONS and 3 copies Issued as to Defendant.(vmj, ) (Entered: 08/08/2005)
08/05/2005	<u>5</u>	MINUTE entry before Judge Samuel Der-Yeghiayan: Initial status hearing set for 10/4/2005 at 09:00 a.m. At least four working days before the initial status hearing, the parties shall conduct a FRCP 26(f) conference and file a joint written Initial Status Report, not to exceed five pages in length, and file the Court's Joint Jurisdictional Status Report and deliver courtesy copies to this Court's chambers. The Court's standing orders on the Initial Status Report and Joint Jurisdictional Status Report maybe obtained from Judge Der-Yeghiayan's web page or from this Court's Courtroom Deputy. Mailed notice (vmj, ) (Entered: 08/08/2005)
08/08/2005	<u>7</u>	AFFIDAVIT of Service regarding summons and complaint served on Stephen L. Johnson on 8/3/05 (vmj, ) (Entered: 08/12/2005)
08/17/2005	<u>9</u>	DESIGNATION of Kurt N. Lindland as U.S. Attorney for Defendant Stephen L. Johnson. (jmm, ) (Entered: 08/19/2005)
08/19/2005	<u>8</u>	ATTORNEY Appearance for Defendant Stephen L. Johnson by Heather Elizabeth Gange (Gange, Heather) (Entered: 08/19/2005)
08/31/2005	<u>10</u>	ATTORNEY Appearance for Intervenor Onyx Environmental Services, LLC by Joseph M. Kellmeyer, Edward A. Cohen and W. David Wells. (vmj, ) (Entered: 09/06/2005)
08/31/2005	<u>11</u>	ANSWER to Complaint by Onyx Environmental Services LLC(vmj, ) (Entered: 09/06/2005)
08/31/2005	<u>12</u>	MOTION by Onyx Environmental Services LLC to intervene (vmj, ) (Entered: 09/06/2005)
08/31/2005	<u>13</u>	MEMORANDUM by Onyx Environmental Services LLC in Support of motion to intervene <u>12</u> (vmj, ) (Entered: 09/06/2005)
09/13/2005	<u>14</u>	MINUTE entry before Judge Samuel Der-Yeghiayan : MOTION by Intervenor Onyx Environmental Services LLC to intervene <u>12</u> is denied for failure to comply with Local Rule 5.3. Telephone notice (jms, ) (Entered: 09/13/2005)
09/15/2005	<u>15</u>	MOTION by Plaintiffs Sierra Club, American Bottom Conservancy, Defendant Stephen L. Johnson to stay <i>and Waive Requirements of Standing Order</i> (Attachments: # <u>1</u> )(Gange, Heather) (Entered: 09/15/2005)
09/15/2005	<u>16</u>	CERTIFICATE of Service <i>and Notice of Electronic Filing</i> by Heather Elizabeth Gange on behalf of Sierra Club, American Bottom Conservancy, Stephen L. Johnson regarding MOTION by Plaintiffs Sierra Club, American Bottom Conservancy, Defendant Stephen L. Johnson to stay <i>and Waive Requirements of Standing Order</i> <u>15</u> (Attachments: # <u>1</u> # <u>2</u> )(Gange, Heather) (Entered: 09/15/2005)

09/21/2005	<u>17</u>	MINUTE entry before Judge Samuel Der-Yeghiayan : Motion hearing held. MOTION by Plaintiffs Sierra Club, American Bottom Conservancy, Defendant Stephen L Johnson to stay and Waive Requirements of Standing Order <u>15</u> is granted. Status hearing set for 1/11/2006 at 09:00 AM. No notice, advised in open court (jms, ) (Entered: 09/21/2005)
01/05/2006	<u>18</u>	STIPULATION ( <i>Joint</i> ) and Proposed Order to Stay Proceedings (Attachments: # <u>1</u> # <u>2</u> )(Gange, Heather) (Entered: 01/05/2006)
01/09/2006	<u>19</u>	MINUTE entry before Judge Samuel Der-Yeghiayan : Pursuant to the parties' joint stipulation, status hearing reset to 2/28/06 at 9:00 a.m. Case ordered stayed until 2/28/06. Status hearing set for 01/11/06 is stricken. Mailed notice (eav, ) (Entered: 01/11/2006)
01/09/2006	<u>20</u>	PROPOSED ORDER to stay proceedings Signed by Judge Samuel Der-Yeghiayan on 1/9/2006:Mailed notice(eav, ) (Entered: 01/11/2006)
01/31/2006	<u>21</u>	MOTION by Plaintiffs Sierra Club, American Bottom Conservancy, Defendant Stephen L Johnson to approve consent judgment ( <i>Joint Motion</i> ) (Attachments: # <u>1</u> )(Gange, Heather) (Entered: 01/31/2006)
02/24/2006	<u>22</u>	MINUTE entry before Judge Samuel Der-Yeghiayan : Pursuant to the signed consent decree, the parties' joint motion to enter consent decree <u>21</u> is granted. All pending dates and motions are hereby stricken as moot. The Court to retain jurisdiction to enforce the consent decree. Civil case terminated. Mailed notice (eav, ) (Entered: 02/28/2006)
02/24/2006	<u>23</u>	CONSENT DECREE Signed by Judge Samuel Der-Yeghiayan on 2/24/2006:Mailed notice(eav, ) (Entered: 02/28/2006)
02/24/2006	<u>24</u>	ENTERED JUDGMENT Signed by Judge Samuel Der-Yeghiayan on 2/24/2006:Mailed notice(eav, ) (Entered: 02/28/2006)

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

JEREMY NICHOLS,

Plaintiff,

v.

Civ. No. 1:05-cv-02215 (RCL)

STEPHEN L. JOHNSON,  
Administrator, United States Environmental  
Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Defendant

**SETTLEMENT AGREEMENT**

WHEREAS, Plaintiffs Jeremy Nichols has filed a complaint styled as *Jeremy Nichols v. Stephen L. Johnson*, No. 1:05-cv-02215 (D.D.C.), alleging that Mr. Johnson, the Administrator of the U.S. Environmental Protection Agency ("EPA"), failed to perform a nondiscretionary duty under section 505(b)(2) of the Clean Air Act ("CAA") to respond to Mr. Nichols's administrative petition to object to the Colorado Department of Public Health and Environment's issuance of a Title V permit to the Colorado Interstate Gas Company's Latigo Compressor Station;

WHEREAS, on February 17, 2006 Mr. Johnson signed an order responding to Mr. Nichols's administrative petition to object to the Colorado Department of Public Health and Environment's issuance of a Title V permit to the Colorado Interstate Gas Company's Latigo Compressor Station;

WHEREAS, on the date of execution of this Settlement Agreement, EPA and Mr. Nichols (collectively, the "Parties") have filed a stipulation of partial dismissal dismissing this



action except for Nichols's claim for costs of litigation, including attorney fees, pursuant to CAA section 304(d), 42 U.S.C. § 7604(d);

WHEREAS, the Parties wish to resolve the claim for costs of litigation without further litigation;

NOW, THEREFORE, the Parties stipulate and agree as follows:

1. The United States shall pay the sum of \$4736.68 to Nichols in full and complete settlement of Nichols's claims for attorneys' fees and costs in the above-referenced matter.

Nichols and EPA agree that the amount provided herein constitutes a fair, reasonable and full and complete settlement of all claims for attorney fees and costs under any provision of law that Nichols asserted or could have asserted in connection with this litigation. The payment from the United States shall be made by electronic wire transfer in accordance with instructions provided by Nichols's counsel, as soon as reasonably practical after the execution of this Agreement by the Parties. However, if the United States fails to comply with its obligation in the first sentence of paragraph 1 within 120 days of the submission of necessary paperwork for payment of the above amount to the Department of the Treasury's Judgment Fund Office, then Plaintiff's remedy shall be to file a motion for attorneys' fees and costs of litigation in the above-referenced litigation and Plaintiff shall not be bound in any manner by the \$4736.68 amount.


2. Defendant's counsel agrees to submit all necessary paperwork to the Judgment Fund Office, pursuant to 42 U.S.C. § 7604(d), within ten business days of signing of this settlement agreement.

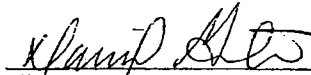
3. The United States' obligation is subject to the availability of appropriated funds. No provision of this Agreement shall be interpreted as or constitute a commitment or requirement that the United States obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341. However, if the United States fails to comply with its obligation under

paragraph 1 within 120 days of the submission of necessary paperwork to the Judgment Fund Office, then Plaintiff's remedy shall be to file a motion for attorneys' fees and costs of litigation in the above-referenced litigation.

4. The Parties will file a stipulation of dismissal pursuant to Fed. R. Civ. P. 41 within ten business days of the United States fulfilling its obligation under Paragraph 1, above. However, if the United States fails to comply with its obligation in the first sentence of paragraph 1 within 120 days of the submission of necessary paperwork to the Judgment Fund Office, then Plaintiff's remedy shall be to file a motion for attorneys' fees and costs of litigation in the above-referenced litigation and Plaintiff shall not be required to file a stipulation of dismissal pursuant to Fed. R. Civ. P. 41.

5. The undersigned representatives of each Party certify that they are fully authorized by the Party that they represent to bind that Party to the terms of this Agreement.

  
ROBERT UKEILEY (MD14062)  
Law Office of Robert Ukeiley  
433 Chestnut St.  
Berea, KY 40403  
(859) 986-5402  
E-mail: [rukeiley@igc.org](mailto:rukeiley@igc.org)  
Counsel for Plaintiff

  
SUE ELLEN WOOLDRIDGE  
Assistant Attorney General  
Environment and Natural  
Resources Division

DAVID GUNTER  
Environmental Defense Section  
U.S. Department of Justice  
P.O. Box 23986  
Washington, D.C. 20026-3986  
(202) 514-3785  
Counsel for Defendant

Dated: 3/14/06

CLOSED, TYPE-C

**U.S. District Court**  
**District of Columbia (Washington, DC)**  
**CIVIL DOCKET FOR CASE #: 1:05-cv-02215-RCL**

NICHOLS v. JOHNSON  
Assigned to: Chief Judge Royce C. Lamberth  
Cause: 42:7604 Clear Air Act (Emission Standards)

Date Filed: 11/14/2005  
Date Terminated: 05/11/2006  
Jury Demand: None  
Nature of Suit: 893 Environmental Matters  
Jurisdiction: U.S. Government Defendant

Date Filed	#	Docket Text
11/14/2005	<u>1</u>	COMPLAINT against STEPHEN L. JOHNSON (Filing fee \$ 250) filed by JEREMY NICHOLS.(tg, ) (Entered: 11/16/2005)
11/14/2005		Summons (3) Issued as to STEPHEN L. JOHNSON., SUMMONS Issued as to STEPHEN L. JOHNSON, U.S. Attorney and U.S. Attorney General, Summons Issued as to STEPHEN L. JOHNSON, USA (tg, ) (Entered: 11/16/2005)
11/29/2005	<u>2</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed on Attorney General. Date of Service Upon Attorney General 11/25/05. (Ukeiley, Robert) (Entered: 11/29/2005)
11/29/2005	<u>3</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the US Attorney. STEPHEN L. JOHNSON served on 11/25/2005, answer due 1/24/2006 (Ukeiley, Robert) (Entered: 11/29/2005)
11/29/2005	<u>4</u>	ENTERED IN ERROR.....RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to (Ukeiley, Robert) Modified on 12/2/2005 (tg, ). (Entered: 11/29/2005)
12/02/2005		NOTICE OF CORRECTED DOCKET ENTRY: (Incomplete Entry) re <u>4</u> Summons Returned Executed as to Federal Defendant was entered in error and counsel was instructed to refile said pleading. (tg, ) (Entered: 12/02/2005)
12/05/2005	<u>5</u>	ENTERED IN ERROR.....RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to (Ukeiley, Robert) Modified on 12/6/2005 (tg, ). (Entered: 12/05/2005)
12/06/2005		NOTICE OF CORRECTED DOCKET ENTRY: re <u>5</u> Summons Returned Executed as to Federal Defendant was entered in error. Counsel was instructed to send said pleading to the cmecf inbox for filing by the clerk. (tg, ) (Entered: 12/06/2005)
12/06/2005	<u>6</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to STEPHEN L. JOHNSON Served on 11/25/2005, Answer Due 1/24/2006. (tg, ) (Entered: 12/06/2005)
01/05/2006	<u>7</u>	MOTION for Extension of Time to File Answer by STEPHEN L. JOHNSON. (Gunter, John) (Entered: 01/05/2006)
01/12/2006	<u>8</u>	ORDER granting defendant's Motion <u>7</u> for Extension of Time to Answer. Defendant's response to plaintiff's complaint must be served on or before 2/10/06. Signed by Judge Royce C. Lamberth on 1/12/06. (lcrl2, ) (Entered: 01/12/2006)
01/12/2006		Set/Reset Deadlines: Answer due by 2/10/2006. (mon, ) (Entered: 01/17/2006)
02/10/2006	<u>9</u>	Unopposed MOTION for Extension of Time to File Answer to Complaint by STEPHEN L. JOHNSON. (Gunter, John) (Entered: 02/10/2006)
02/23/2006	<u>10</u>	ORDER granting defendant's unopposed Motion <u>9</u> to Extend Time to Answer. Defendant's response to plaintiff's complaint must be served on or before 3/17/06. Signed by Judge Royce C. Lamberth on 2/22/06. (lcrl2, ) (Entered: 02/23/2006)
02/23/2006		Set/Reset Deadlines: Answer due by 3/17/2006. (mon, ) (Entered: 02/27/2006)

Case: 1:05-cv-02215-RCL As of: 02/27/2009 04:01 PM EST 2 of 2

03/15/2006	<u>11</u>	Joint MOTION to Stay <i>All Deadlines</i> by STEPHEN L. JOHNSON. (Gunter, John) (Entered: 03/15/2006)
03/15/2006	<u>12</u>	STIPULATION of <i>Partial Dismissal</i> by STEPHEN L. JOHNSON. (Gunter, John) (Entered: 03/15/2006)
03/20/2006	<u>13</u>	ORDER granting Joint Motion <u>11</u> to Stay of All Deadlines Pending Settlement Negotiations and granting stay of all proceedings and deadlines in this matter for 120 days. Signed by Judge Royce C. Lamberth on 3/20/06. (lcrcl2, ) (Entered: 03/20/2006)
05/11/2006	<u>14</u>	STIPULATION of Dismissal ( <i>Joint Stipulation Authorized by Plaintiff</i> ) by STEPHEN L. JOHNSON. (Gunter, John) (Entered: 05/11/2006)

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

SIERRA CLUB,

Plaintiff,

v.

STEPHEN L. JOHNSON, in his official  
capacity as Administrator, United States  
Environmental Protection Agency,

Defendant.

Civ. No. 05cv02177 (RMC)

DS # 90-52-  
4-  
17733

CONSENT DECREE

WHEREAS, Plaintiff Sierra Club has submitted, pursuant to section 505(b)(2) of the Clean Air Act, 42 U.S.C. § 7661d(b)(2), two administrative petitions, dated July 9, 2002 and November 18, 2002, respectively, to the Administrator of the U.S. Environmental Protection Agency ("EPA"), requesting that he object to certain Title V operating permit amendments proposed by the Georgia Environmental Protection Division for steam electric generating plants at (1) Georgia Power's Bowen Steam-Electric Generating Plant ("Plant Bowen"), and (2) the Bowen, McDonough/Atkinson, Yates, Hammond, Wansley, Scherer, and Branch Steam-Electric Generating Plants (collectively "the seven power plants") in the State of Georgia;

WHEREAS, the Complaint in this case alleges that EPA has a nondiscretionary duty under Clean Air Act section 505(b)(2) to respond within 60 days of the filing of the petitions regarding Plant Bowen and the seven power plants, and that EPA has not done so;

WHEREAS, the Plaintiff contends that it is entitled, pursuant to Clean Air Act section

304(d), 42 U.S.C. § 7604(d), to an award of its costs of litigation (including reasonable attorneys' fees) with respect to the claims asserted in the above-captioned matter;

WHEREAS, Plaintiff and EPA (collectively the "Parties") wish to effect a settlement of the above-captioned matter, including Plaintiff's claims for costs of litigation and reasonable attorneys' fees, without expensive and protracted litigation;

WHEREAS, the Parties have agreed to a settlement without admission of any issue of fact or law;

WHEREAS, by entering into this Decree, the Parties do not waive or limit any claim or defense, on any grounds, related to any final EPA action approving, disapproving, and/or modifying, revoking or terminating Title V permits for either Plant Bowen or the seven power plants;

WHEREAS, the Parties consider this Decree to be an adequate and equitable resolution of all of the claims in the above-captioned matter; and

WHEREAS, the Court, by entering this Decree, finds that the Decree is fair, reasonable, in the public interest, and consistent with the Clean Air Act, 42 U.S.C. §§ 7401-7671q.

NOW THEREFORE, before the taking of testimony, without trial or determination of any issue of fact or law, and upon the consent of the Parties, it is hereby ordered, adjudged and decreed that:

1. EPA signed its combined response to the Plant Bowen petition and the seven power plants petition on March 15, 2006. EPA shall provide a copy of this response to the Plaintiff within five business days of March 15, 2006. Within 15 business days of March 15, 2006, the date EPA signed the response, EPA shall deliver notice of such response to the Office of the Federal Register for prompt publication. Following such delivery to the Office of the

Federal Register, EPA shall not take any step (other than as necessary to correct within 10 business days after submittal any typographical or other errors in form) to delay or otherwise interfere with publication of such notice in the Federal Register.

2. The United States shall pay \$6,800.00 to the Plaintiff by electronic funds transfers to the account provided by Plaintiff's counsel.

3. The Parties may modify this Decree by written stipulation executed by counsel for the Parties and filed with the Court.

4. Nothing in this Decree shall be construed to limit or modify the discretion accorded EPA by the Clean Air Act and by general principles of administrative law, including the discretion to alter, amend or revise any responses and/or final actions contemplated by this Decree. EPA's obligation to perform the action specified in Paragraphs 1 and 2 by the time specified therein does not constitute a limitation or modification of EPA's discretion within the meaning of this paragraph.

5. Nothing in this Decree shall be construed to confer upon the district court jurisdiction to review any decision, either procedural or substantive, to be made by EPA pursuant to this Decree. Nothing in this Decree shall be construed to confer upon the district court jurisdiction to review any issues that are within the exclusive jurisdiction of the United States Courts of Appeals pursuant to sections 307(b)(1) and 505 of the Clean Air Act, 42 U.S.C. §§ 7607(b)(1), 7661d.

6. The obligations imposed upon EPA under this Decree can only be undertaken using appropriated funds. No provision of this Decree shall be interpreted as or constitute a commitment or requirement that EPA obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable federal law.



7. Plaintiff agrees that payment pursuant to Paragraph 2 shall be in complete settlement of all claims for litigation costs, including reasonable attorneys' fees, under any provision of law they have asserted or could have asserted in connection with the above-captioned matter up until the date of the filing of this consent order. Upon payment as provided in Paragraph 2, Plaintiff discharges and covenants not to sue the United States, including EPA, for any claims regarding such fees and costs up until the date of filing of this consent order. The parties agree that Plaintiff reserves the right to seek additional attorney fees and costs incurred subsequent to the date of filing of this consent order to enforce or defend against efforts to modify this consent order.

8. Any notices required or provided for by this Decree shall be made in writing, via facsimile or other means, and sent to the following:

For Plaintiff:

Robert Ukeiley  
Law Office of Robert Ukeiley  
433 Chestnut Street  
Berea, KY 40403  
Tel: (859) 986-5402  
Fax: (859) 986-1299  
E-mail: rukeiley@igc.org

For Defendant:

Catherine Wannamaker  
United States Department of Justice  
Environment and Natural Resources Division  
Environmental Defense Section  
P.O. Box 23986  
Washington, DC 20004 -3986  
Tel: (202)514-9365  
Fax: (202)514-8865  
E-mail: catherine.wannamaker@usdoj.gov

Howard J. Hoffman

Office of General Counsel  
U.S. Environmental Protection Agency  
Ariel Rios Bldg., MC 2377A  
1200 Pennsylvania Ave., N.W.  
Washington, DC 20460  
Tel: (202) 564-5582  
Fax: (202) 564-5603  
E-mail: hoffman.howard@epa.gov

9. In the event of a dispute between the Parties concerning the interpretation or implementation of any aspect of this Decree, the disputing party shall provide the other Parties with a written notice outlining the nature of the dispute and requesting informal negotiations. If the Parties cannot reach an agreed-upon resolution within five (5) business days after receipt of the notice, any party may move the Court to resolve the dispute.

10. Subject to the process set out in Paragraph 9,

(a) this Court shall retain jurisdiction over the above-captioned matter for the purpose of enabling the Parties to apply to the Court for any further orders that may be necessary to construe, implement or enforce compliance with the terms and conditions set forth in this Decree; and

(b) the Court may modify the obligations of this Decree upon motion by any party to the Consent Decree pursuant to the Federal Rules of Civil Procedure.

11. No motion or other proceeding seeking to enforce this Decree or for contempt of Court shall be properly filed, unless the Plaintiff has followed the procedure set forth in Paragraph 9 and provided EPA with written notice received at least five business days before the filing of such motion or proceeding.

12. When EPA's obligations under Paragraphs 1 and 2 have been completed, the above-captioned matter shall be dismissed with prejudice. EPA shall file the appropriate notice with the Court so that the Clerk may dismiss the case with prejudice.

13. The obligations of this Decree and this Court's jurisdiction over this case shall terminate upon completion of all requirements of this Decree.

14. The undersigned representatives of each Party certify that they are fully authorized by the Party that they represent to bind that Party to the terms of this Decree.

**COUNSEL FOR PLAINTIFF:**

Dated: March 20, 2006

Respectfully submitted,

/s/ Robert Ukeiley  
Robert Ukeiley (MD14062)  
Law Office of Robert Ukeiley  
433 Chestnut Street  
Berea, KY 40403  
Tel: (859) 986-5402  
Fax: (859) 986-1299  
E-mail: rukeiley@igc.org

**COUNSEL FOR DEFENDANT:**

Dated: March 20, 2006

Sue Ellen Wooldridge  
Assistant Attorney General  
Environment & Natural Resources Division

/s/ Catherine Wannamaker  
Catherine Wannamaker  
United States Department of Justice  
Environment & Natural Resources Division  
Environmental Defense Section  
P.O. Box 23986  
Washington, DC 20004 -3986

Howard J. Hoffman  
Office of General Counsel  
U.S. Environmental Protection Agency  
Ariel Rios Bldg., MC 2377A  
1200 Pennsylvania Ave., N.W.  
Washington, DC 20460

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_, 2006

\_\_\_\_\_  
Rosemary M. Collyer  
U.S. District Judge

Case: 1:05-cv-02177-RMC As of: 02/27/2009 04:04 PM EST 1 of 2

CLOSED, STAYED, TYPE-C

**U.S. District Court**  
**District of Columbia (Washington, DC)**  
**CIVIL DOCKET FOR CASE #: 1:05-cv-02177-RMC**

SIERRA CLUB v. JOHNSON  
Assigned to: Judge Rosemary M. Collyer  
Cause: 42:7604 Clear Air Act (Emission Standards)

Date Filed: 11/04/2005  
Date Terminated: 08/31/2006  
Jury Demand: None  
Nature of Suit: 893 Environmental Matters  
Jurisdiction: U.S. Government Defendant

Date Filed	#	Docket Text
11/04/2005	<u>1</u>	COMPLAINT against STEPHEN L. JOHNSON (Filing fee \$ 250) filed by SIERRA CLUB.(tg, ) (Entered: 11/10/2005)
11/04/2005	<u>2</u>	LCvR 7.1 - CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests by SIERRA CLUB (tg, ) (Entered: 11/10/2005)
11/04/2005		Summons (3) Issued as to STEPHEN L. JOHNSON, U.S. Attorney and U.S. Attorney General (tg, ) (Entered: 11/10/2005)
11/29/2005	<u>3</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the US Attorney. STEPHEN L. JOHNSON served on 11/17/2005, answer due 1/17/2006 (Ukeiley, Robert) (Entered: 11/29/2005)
11/29/2005	<u>4</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed on Attorney General. Date of Service Upon Attorney General 11/17/05. (Ukeiley, Robert) (Entered: 11/29/2005)
11/29/2005	<u>5</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to Stephen L. Johnson served on 11/17/05, answer due 1/17/05 (Ukeiley, Robert) Modified on 11/30/2005 (jf, ). (Entered: 11/29/2005)
11/30/2005	<u>6</u>	NOTICE of Appearance by Catherine Wannamaker on behalf of all defendants (Wannamaker, Catherine) (Entered: 11/30/2005)
01/05/2006	<u>7</u>	MOTION for Summary Judgment by SIERRA CLUB. (Attachments: # <u>1</u> Exhibit 1# <u>2</u> Statement of Facts # <u>3</u> Text of Proposed Order)(Ukeiley, Robert) (Entered: 01/05/2006)
01/06/2006	<u>8</u>	Joint MOTION to Stay <i>Proceedings</i> by SIERRA CLUB. (Attachments: # <u>1</u> Text of Proposed Order)(Ukeiley, Robert) (Entered: 01/06/2006)
01/12/2006		MINUTE ENTRY ORDER granting the parties' <u>8</u> Joint Motion to Stay <i>Proceedings</i> . This action is hereby stayed until February 21, 2006, to provide the parties an opportunity to formalize their settlement agreement and execute a consent decree. Signed by Judge Rosemary M. Collyer on 1/12/06. (ebb) (Entered: 01/12/2006)
02/01/2006	<u>9</u>	NOTICE of Lodging of Proposed Consent Decree by STEPHEN L. JOHNSON (Attachments: # <u>1</u> Proposed Consent Decree)(Wannamaker, Catherine) (Entered: 02/01/2006)
02/17/2006	<u>10</u>	Joint MOTION to Stay <i>Proceedings</i> by STEPHEN L. JOHNSON. (Attachments: # <u>1</u> )(Wannamaker, Catherine) (Entered: 02/17/2006)
03/01/2006		MINUTE ENTRY ORDER granting <u>10</u> the parties' Joint Motion to Stay <i>Proceedings</i> . All proceedings in this case shall be STAYED until March 20, 2006. Signed by Judge Rosemary M. Collyer on 3/1/06. (ebb) (Entered: 03/01/2006)

Case: 1:05-cv-02177-RMC As of: 02/27/2009 04:04 PM EST 2 of 2

03/01/2006		Case Stayed (cdw) (Entered: 03/03/2006)
03/20/2006	<u>11</u>	Unopposed MOTION To Enter Consent Decree <i>with attached proposed decree</i> by STEPHEN L. JOHNSON. (Attachments: # <u>1</u> )(Wannamaker, Catherine) (Entered: 03/20/2006)
04/05/2006		MINUTE ENTRY ORDER granting <u>11</u> Defendant's Unopposed Motion to Enter Consent Decree. The parties' Consent Decree is hereby approved. Signed by Judge Rosemary M. Collyer on 4/5/06. (ebb) (Entered: 04/05/2006)
07/06/2006	<u>12</u>	STIPULATION of Dismissal by STEPHEN L. JOHNSON. (Wannamaker, Catherine) (Entered: 07/06/2006)
07/06/2006		MINUTE ENTRY ORDER approving the parties' <u>12</u> Joint Stipulation of Dismissal. Pursuant to Fed. R. Civ. P. 41(a)(1)(ii), this action is hereby dismissed with prejudice. Signed by Judge Rosemary M. Collyer on 7/6/06. (ebb) (Entered: 07/06/2006)



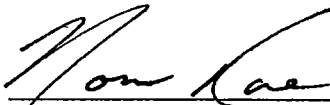
### SETTLEMENT AGREEMENT FOR ATTORNEYS' FEES

Plaintiffs Our Children's Earth Foundation and Sierra Club (collectively "Plaintiffs") and defendants United States Environmental Protection Agency and Stephen L. Johnson (collectively "EPA") enter into the following agreement to resolve Plaintiffs' claims for attorneys' fees and costs in the matter of *Our Children's Earth Foundation and Sierra Club v. United States Environmental Protection Agency and Stephen L. Johnson*, Case No. C 05-5184 WHA (N.D. Cal.).

EPA agrees to pay Plaintiffs, and Plaintiffs agree to accept, the total amount of fourteen thousand one hundred twenty-three dollars and thirty-four cents (\$14,123.34) in full settlement of all claims for costs of litigation incurred in the above action up to and including the date of execution of this agreement. This settlement agreement shall not be interpreted to preclude any rights plaintiffs may have to secure payment of any costs or attorneys' fees they may incur in this matter after the date of execution of this agreement. Payment will be made as soon as reasonably practicable by electronic transfer to plaintiff Our Children's Earth.

For EPA:

SUE ELLEN WOOLDRIDGE  
Assistant Attorney General  
Environment and Natural Resources Division



NORMAN L. RAVE, JR.  
Trial Attorney  
United States Department of Justice

Date: April 6, 2006

For Plaintiffs:

  
\_\_\_\_\_  
MICHAEL A. COSTA  
Our Children's Earth Foundation

Date: April 6, 2006

Case: 3:05-cv-05184-WHA As of: 02/27/2009 12:07 PM PST 1 of 3

ADRMOP, CLOSED, E-Filing

**U.S. District Court**  
**California Northern District (San Francisco)**  
**CIVIL DOCKET FOR CASE #: 3:05-cv-05184-WHA**

Our Children's Earth Foundation & Sierra Club v. United States  
 Environmental Protection Agency et al  
 Assigned to: Hon. William H. Alsup  
 Cause: 28:1391 Personal Injury

Date Filed: 12/14/2005  
 Date Terminated: 08/22/2006  
 Jury Demand: None  
 Nature of Suit: 893 Environmental Matters  
 Jurisdiction: U.S. Government Defendant

Date Filed	#	Docket Text
12/14/2005	<u>1</u>	COMPLAINT against United States Environmental Protection Agency, Stephen Johnson ( Filing fee \$ 250, receipt number 3379452.). Filed by Our Children's Earth Foundation & Sierra Club. (ga, COURT STAFF) (Filed on 12/14/2005) (Entered: 12/15/2005)
12/14/2005		Summons Issued as to United States Environmental Protection Agency, Stephen Johnson, U.S. Attorney and U.S. Attorney General (ga, COURT STAFF) (Filed on 12/14/2005) (Entered: 12/15/2005)
12/14/2005	<u>2</u>	ADR SCHEDULING ORDER: Case Management Statement due by 4/12/2006. Case Management Conference set for 4/19/2006 10:30 AM.. Signed by Judge James Larson on 12/14/05. (Attachments: # <u>1</u> Standing Order)(ga, COURT STAFF) (Filed on 12/14/2005) (Entered: 12/15/2005)
12/14/2005		CASE DESIGNATED for Electronic Filing. (ga, COURT STAFF) (Filed on 12/14/2005) (Entered: 12/15/2005)
12/14/2005	<u>3</u>	Certificate of Interested Entities re 1 Complaint (ga, COURT STAFF) (Filed on 12/14/2005) (Entered: 12/15/2005)
12/29/2005	<u>4</u>	CONSENT to Proceed Before a US Magistrate Judge by Our Children's Earth Foundation & Sierra Club.. (ga, COURT STAFF) (Filed on 12/29/2005) (Entered: 12/29/2005)
12/29/2005	<u>5</u>	CERTIFICATE OF SERVICE by Our Children's Earth Foundation & Sierra Club re 1 Complaint, <u>2</u> ADR Scheduling Order (ga, COURT STAFF) (Filed on 12/29/2005) (Entered: 01/09/2006)
01/30/2006	<u>6</u>	Declination to Proceed Before a U.S. Magistrate Judge by United States Environmental Protection Agency, Stephen Johnson. (Rave, Norman) (Filed on 1/30/2006) (Entered: 01/30/2006)
01/31/2006	<u>7</u>	CLERK'S NOTICE of Impending Reassignment to U.S. District Judge (wh, COURT STAFF) (Filed on 1/31/2006) (Entered: 01/31/2006)
01/31/2006	<u>8</u>	ORDER REASSIGNING CASE. Case reassigned to Judge William H. Alsup for all further proceedings. Judge James Larson no longer assigned to case. Signed by Executive Committee on 1/31/06. (as, COURT STAFF) (Filed on 1/31/2006) (Entered: 01/31/2006)
02/01/2006	<u>9</u>	CLERK'S NOTICE Scheduling Initial Case Management Conference on Reassignment set for 3/16/2006 11:00 AM. Case Management Statement due by 3/2/2006. (dt, COURT STAFF) (Filed on 2/1/2006) (Entered: 02/01/2006)
02/01/2006	<u>10</u>	SUPPLEMENTAL ORDER TO ORDER SETTING INITIAL CASE MANAGEMENT CONFERENCE re <u>9</u> Clerks Notice. Signed by Judge William Alsup on 10/19/04. (dt, COURT STAFF) (Filed on 2/1/2006) (Entered: 02/01/2006)
02/27/2006	<u>11</u>	ANSWER to Complaint by United States Environmental Protection Agency, Stephen Johnson. (Rave, Norman) (Filed on 2/27/2006) (Entered: 02/27/2006)
03/02/2006	<u>12</u>	STIPULATION To Hold Case In Abeyance and Continue Case Management Conference by United States Environmental Protection Agency, Stephen Johnson, et al. (Rave, Norman) (Filed on 3/2/2006) (Entered: 03/02/2006)

Our Children's Earth Foundation & Sierra Club, LLC v. EPA  
 No. 4:08-cv-872 (S.D. Tex.)  
 Gunter Declaration  
 Exhibit B9, page 3

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		(Attachments: # <u>1</u> Proposed Order)(Rave, Norman) (Filed on 3/2/2006) (Entered: 03/02/2006)
03/03/2006	<u>13</u>	ORDER DENYING REQUESTS TO STAY ACTION AND TO CONTINUE THE CASE MANAGEMENT CONFERENCE re <u>12</u> Stipulation filed by United States Environmental Protection Agency,, Stephen Johnson. Signed by Judge Alsup on 3/2/06. (whalc2, COURT STAFF) (Filed on 3/3/2006) (Entered: 03/03/2006)
03/03/2006	<u>14</u>	JOINT CASE MANAGEMENT STATEMENT filed by Our Children's Earth Foundation & Sierra Club. (Costa, Michael) (Filed on 3/3/2006) (Entered: 03/03/2006)
03/03/2006	<u>15</u>	ADR Certification (ADR L.R. 3-5b) of discussion of ADR options <i>AND Stipulation and (Proposed) Order Selecting ADR Process</i> (Costa, Michael) (Filed on 3/3/2006) (Entered: 03/03/2006)
03/03/2006	<u>16</u>	CERTIFICATE OF SERVICE by Our Children's Earth Foundation & Sierra Club re <u>15</u> ADR Certification (ADR L.R. 3-5b) of discussion of ADR options, <u>14</u> Case Management Statement (Joint) (Costa, Michael) (Filed on 3/3/2006) (Entered: 03/03/2006)
03/06/2006	<u>17</u>	ADR Certification (ADR L.R. 3-5b) of discussion of ADR options <i>by Defendant US EPA</i> (Rave, Norman) (Filed on 3/6/2006) (Entered: 03/06/2006)
03/08/2006	<u>18</u>	Joint MOTION to Appear by Telephone <i>at Case Management Conference</i> filed by United States Environmental Protection Agency, Stephen Johnson. (Attachments: # <u>1</u> Proposed Order)(Rave, Norman) (Filed on 3/8/2006) (Entered: 03/08/2006)
03/09/2006	<u>19</u>	ORDER GRANTING REQUEST TO APPEAR AT CASE MANAGEMENT CONFERENCE BY TELEPHONE [re <u>18</u> Joint MOTION to Appear by Telephone at Case Management Conference filed by United States Environmental Protection Agency, Stephen Johnson]. Signed by Judge William Alsup on 3/9/2006. (whasec, COURT STAFF) (Filed on 3/9/2006) (Entered: 03/09/2006)
03/16/2006	<u>20</u>	Minute Entry: Initial Case Management Conference held on 3/16/2006 before William Alsup (Date Filed: 3/16/2006). Parties have reached a settlement agreement. Arbitration Hearing set for 4/13/2006 11:00 AM. (Court Reporter Debra Pas.) (dt, COURT STAFF) (Date Filed: 3/16/2006) (Entered: 03/17/2006)
04/03/2006	<u>21</u>	MOTION to Intervene filed by American Petroleum Institute, National Petrochemical & Refiners Association. Motion Hearing set for 5/11/2006 08:00 AM in Courtroom 9, 19th Floor, San Francisco. (Attachments: # <u>1</u> # <u>2</u> # <u>3</u> )(Sugerman, Jeremy) (Filed on 4/3/2006) (Entered: 04/03/2006)
04/07/2006	<u>22</u>	NOTICE by United States Environmental Protection Agency, Stephen Johnson <i>of Lodging Consent Decree</i> (Attachments: # <u>1</u> Proposed Consent Decree)(Rave, Norman) (Filed on 4/7/2006) (Entered: 04/07/2006)
04/07/2006	<u>23</u>	Memorandum in Opposition <u>21</u> <i>Industries' Motion to Intervene</i> filed by Our Children's Earth Foundation & Sierra Club. (Costa, Michael) (Filed on 4/7/2006) Modified on 4/10/2006 (sis, COURT STAFF). (Entered: 04/07/2006)
04/20/2006	<u>24</u>	RESPONSE to re <u>21</u> MOTION to Intervene by United States Environmental Protection Agency, Stephen Johnson. (Attachments: # <u>1</u> Order on Intervention in No. 05-0094 CW)(Rave, Norman) (Filed on 4/20/2006) (Entered: 04/20/2006)
04/27/2006	<u>25</u>	NOTICE of Substitution of Counsel by Gerald F. George (George, Gerald) (Filed on 4/27/2006) (Entered: 04/27/2006)
04/27/2006	<u>26</u>	Reply to Opposition <u>23</u> <i>and Response to Motion to Intervene</i> filed by American Petroleum Institute, National Petrochemical & Refiners Association. (George, Gerald) (Filed on 4/27/2006) Modified on 4/28/2006 (sis, COURT STAFF). (Entered: 04/27/2006)
05/11/2006	<u>27</u>	Minute Entry: Motion Hearing held on 5/11/2006 before William Alsup (Date Filed: 5/11/2006) re <u>21</u> MOTION to Intervene filed by American Petroleum Institute, National Petrochemical & Refiners Association. Motion taken under submission. (Court Reporter Joan Columbini.) (dt, COURT STAFF) (Date Filed: 5/11/2006) (Entered: 05/11/2006)

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05/11/2006	<u>28</u>	ORDER by Judge Alsup denying <u>21</u> Motion to Intervene. (whalc2, COURT STAFF) (Filed on 5/11/2006) (Entered: 05/11/2006)
06/19/2006	29	TRANSCRIPT of Proceedings held on 05/11/06 before Judge William Alsup. Court Reporter: Joan Columbini. (sis, COURT STAFF) (Filed on 6/19/2006) (Entered: 06/20/2006)
08/18/2006	<u>30</u>	Joint MOTION Enter Consent Decree filed by United States Environmental Protection Agency, Stephen Johnson. (Rave, Norman) (Filed on 8/18/2006) (Entered: 08/18/2006)
08/22/2006	<u>31</u>	ORDER by Judge Alsup granting <u>30</u> Motion for Entry of Consent Decree. (whalc2, COURT STAFF) (Filed on 8/22/2006) (Entered: 08/22/2006)
06/03/2008	<u>32</u>	NOTICE by United States Environmental Protection Agency, Stephen Johnson of <i>Extension of Consent Decree Deadline</i> (Rave, Norman) (Filed on 6/3/2008) (Entered: 06/03/2008)
09/29/2008	<u>33</u>	Consent MOTION to Alter Judgment to <i>Extend Consent Decree Deadline</i> filed by United States Environmental Protection Agency, Stephen Johnson. (Attachments: # <u>1</u> Proposed Order)(Rave, Norman) (Filed on 9/29/2008) (Entered: 09/29/2008)
09/30/2008	<u>34</u>	ORDER RE UNOPPOSED MOTION FOR EXTENSION OF CONSENT DECREE DEADLINE by Judge Alsup granting <u>33</u> Motion to Alter Judgment (whalc2, COURT STAFF) (Filed on 9/30/2008) (Entered: 09/30/2008)